156-590

RECORD, CASE No. 13,744.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., 589. 23 10

THE PITTSBURG AND SOUTHERN COAL COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF LOUISIANA, FOR THE USE OF THE CHARITY HOSPITAL OF NEW ORLEANS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED OCTOBER 12, 1889.

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1 STATE OF LOUISIANA, }
City of New Orleans. }

First City Court of New Orleans.

STATE OF LOUISIANA, for Use of Charity Hospital,
versus
PITTSBURG & SOUTHERN COAL CO.; O. A. Schneidau, Ag't.

No. 14739. First City Court of New Orleans.

Docket Entries.

1888. Claim, $50.00.

August 30th.—Filing petition.

August 30th.—Citation issued; served August 30th, 1888.

September 3rd.—Answer filed.

September 3rd.—Notice of trial issued; served September 5th, 1888.

September 5th.—Document filed.

October 16th.—Testimony and brief filed.

December 10th.—This case came on for trial—W. H. Rogers, Esq., appearing for plaintiff and Benedict & Cage and Geo. Denegre, Esqs., for the defendants—when, after hearing evidence and the law and evidence being in favor of the defendants and for the reasons on file, it is ordered, adjudged, and decreed that there be judgment in favor of the defendant, Pittsburg & Southern Coal Co., and against the State of Louisiana, plaintiff herein, rejecting the demand of plaintiff with costs.

December 14th.—Judgment signed. (Signed) H. H. Price, judge.

December 10th.—Notice of judgment issued to plaintiff; served December 10th, 1888.

December 13th.—Motion and order of appeal filed by State of Louisiana.

December 13th.—Citation of appeal issued to defendant; served December 13th, 1888.

December 13th—Petition of appeal filed by Melancon & Sweeney.

December 13th.—Appeal bond and order bond filed by Melancon & Sweeney.

December 13th.—Citation of appeal issued to defendant; served December 13th, 1888.

2 No. —.

Supreme Court, State of Louisiana.

THE STATE OF LOUISIANA, for the Use of the Charity Hospital,
versus
PITTSBURG & SOUTHERN COAL COMPANY.

Appeal from the first city court of New Orleans—Price, judge.

Walter H. Rogers, attorney general, for State, appellant; H. C. Cage, Bayne, Denegre & Bayne, for defendants and appellees.

Claim of Plaintiff. Filed August 30th, 1888.

The State of Louisiana, for the use of the Charity Hospital of New Orleans, against the Pittsburg & Southern Coal Company, a corporation, represented by its agent, O. A. Schneidau, residing and domiciled in New Orleans, claims the sum of fifty dollars as a penalty for selling one boat of coal that had not been gauged as required by law (act. 197 of 1888) to W. G. Coyle & Co., of New Orleans (name of boat, T. Faucet & Son, No. 1098), on the 30th day of August, 1888.

The State, for the use aforesaid claims, the sum of fifty dollars and costs of suit, for which it prays judgment.

W. H. ROGERS,
Attorney General.

3 *Citation.*

1st City Court of New Orleans.

NEW ORLEANS, 30 *Aug.*, '88

STATE OF LOUISIANA (for the Use of Charity Hospital) *vs.* PITTSBURG AND SOUTHERN COAL CO.; O. A. Schneidau, Ag't. | No. 13739

To the Pittsburg and Southern Coal Co., O. A. Schneidau, agent, New Orleans, Greeting:

You are hereby summoned to be and appear before the first city court of New Orleans within two days next following the service hereof to answer the demand against you by plaintiff for fifty dollars as penalty for selling one boat of coal to W. G. Coyle & Co., as per petition filed, with — per cent. interest from —— —, 188-, and costs.

H. H. PRICE, *Judge.*

Return to Citation.

Received August 30th the within citation, and on the same day, month, and year served a true copy of the same on the Pittsburg & Southern Coal Co., made defendants herein, by leaving it at the commercial domicile, No. 45 Carondelet street, in the hands of O. A. Schneidau, Jr., a person over 14 years and employed there at the time of service, the agent being absent at the time of service, all of which I learned from interrogating the above-named person.

ED. RYAN,
Deputy Constable.

4 *Answer of Defendant. Filed Sept. 3, 1888.*

First City Court, Parish of Orleans, State of Louisiana.

STATE OF LOUISIANA (for the Use of the Charity Hospital)
vs.
THE PITTSBURG AND SOUTHERN COAL CO. } No. 14739.

Now into court, through its undersigned attorney, comes the defendant, The Pittsburg and Southern Coal Company, and for answer denies all and singular the allegations and demands herein made by the plaintiff, except such as may be hereinafter specially admitted.

And, further answering, respondent avers that it is a corporation organized under the laws of the State of Pennsylvania and domiciled in the city of Pittsburg, in the said State, and a citizen thereof; that its business is that of coal-mining, buying and selling coal and coke; that the said coal and coke are the products of the said State of Pennsylvania, and are by respondents loaded in boats and barges on the Ohio and Mississippi rivers and navigated down to the South on the said rivers and sold to purchasers along the banks of the said rivers and their various southern tributaries; that it every year sends down the Mississippi river, a navigable river of the United States, a number of barges and boats with cargoes of coal,

5 and moors the same in the said river, retaining the same, as the property of your respondents, in the vessels in which it is brought down the said river to the city of New Orleans and other points, and holds the same until they are sold to its customers, which is the object with which the said boats and barges are loaded and navigated from the said State of Pennsylvania to the State of Louisiana and other States, said vessels always remaining on the navigable waters of the United States and sold thereon.

Now your respondents aver that the demand herein made is by virtue of act No. 147 of the acts of 1888 of the State of Louisiana, and respondents aver that the said coal-boat No. 1098, for which a penalty of fifty dollars (850) is herein claimed for selling, had been gauged by gaugers employed by respondents, and said boat, at said time of sale, was upon the Mississippi river, a navigable stream of the United States, within the jurisdiction of the United States, and the measurement thereof so made by said gaugers had been in accordance with section 4 of the said act; and that the said firm of W. G. Coyle & Co., to whom the said boat of coal and coke had been sold, were satisfied with the said measurements, desired no further measurement thereof, no certificate of the amount of coal therein, nor did respondents desire any further measurement; that the price was agreed on between your respondents and the said W. G. Coyle & Co., and any further gauging of the said boat and coal was totally unnecessary, uncalled for, and would have been productive of no good or benefit to anybody whatsoever.

6 Respondent further avers that the said coal-boat No. 1098 was laden with a cargo of coal which was mined in Penn-

sylvania, and was by your respondents navigated down the Ohio and Mississippi rivers to a point or place thereon within the boundaries of the State of Louisiana, for the purpose of selling the said vessel and cargo upon the said river in pursuance of the trade or commerce which is carried on by your respondent upon said river and within the body of the various States through which it flows between Pennsylvania and the Gulf of Mexico.

Respondent avers that the said act No. 147 of 1888, making the gauging of the said boat compulsory and exacting ten dollars ($10.00) on each boat sold in Louisiana, under which the attorney general, in the name of the State, proceeds herein, is contrary and repugnant to the constitution of the State of Louisiana, and therefore void, for the following reasons:

1st. It is in violation of article 1 of the said constitution of the State of Louisiana, in that it is not designed to nor does it protect the citizens of this State in the enjoyment of life, liberty, or property, but it is solely for the benefit of two officials, and is therefore usurpatory and oppressive.

2nd. That it is in violation of article 6 of the said constitution, in that it seeks to deprive respondents of its property without due process of law.

3rd. It is in violation of article 29 of the said constitution, in that the title does not express the object of the act, which is not only

"An act for the appointment of two coal and coke boat
7 gaugers, to fix their compensation, and to define their duties,"

but also to regulate the gauging and sale of coke and coal in boats in the port of New Orleans and the State of Louisiana, to change the barrel measure in boats and barges in said State, to make gauging compulsory, and to provide a penalty for the non-observance of the said regulations.

4th. It is in violation of article 16 of the said constitution, in that it is a special law regulating trade, granting to two individuals, viz., the two coal and coke boat gaugers thereunder appointed, special and exclusive rights, privileges, and immunities in the gauging and measurement of coal-boats and creating a monopoly therein.

5th. Respondent avers that the said act 147 of the acts of 1888, under which this claim is prosecuted, is contrary to the Constitution of the United States and therefore null, because it is in violation of paragraph 1, section 2, of article 1 of the Constitution of the United States, in that it impairs the obligation of a contract in this, that respondent has paid to the State of Louisiana the sum of two hundred and fifty dollars ($250) as a license for permission to carry on its business of selling coal and coke within the State of Louisiana; that the said two hundred and fifty dollars ($250) being accepted by the State of Louisiana and the city of New Orleans and a license issued to your respondent thereunder the same constitutes a contract between your respondent and the State of Louisiana and the city of

New Orleans, who have also issued a license to your re-
8 spondent in payment of the said sum, which gives to your respondent the right to sell coal and coke in the said city of

New Orleans and State of Louisiana during the year 1888 without further opposition or hindrance or imposition of any charge or claim or impost on the part of the State of Louisiana or city of New Orleans; that the said license was so obtained and granted by the said State of Louisiana and the city of New Orleans prior to the passage of this act No. 147 of the regular session of 1888.

6th. That the said act violates paragraph 2, section 10, of article 1 of the said Constitution of the United States, in that it seeks to lay an impost or duty on imports in the State of Louisiana from the State of Pennsylvania, which said duty is not necessary for the execution of any inspection law.

7th. That it is in violation of the fifth amendment to the said Constitution of the United States.

8th. That it is in violation of section 1 of the fourteenth amendment of the said Constitution of the United States.

9th. That it is in violation of paragraph 3, section 8, of article 1 of the Constitution of the United States, in that it is a regulation of commerce among the several States, in that it seeks to regulate upon the Mississippi river the sale of the vessels and coal of respondent, which are the subjects of commerce and trade carried on by your respondent on said river between the State of Pennsylvania
9 and other States of the Union and foreign countries.

Respondent avers that the said act is repugnant to the provisions of the Constitution of the United States and the laws thereof, in that it is a discrimination against imports brought into the State of Louisiana in boats upon the navigable waters of the United States in favor of those brought in by land to the said State; in that it subjects the one to the payment of duties, imposts, and exactions set forth in the said act which are not imposed upon those brought in by land.

Respondent avers that the said act discriminates against coal and coke *the* producers of the State of Pennsylvania in favor of the coal and coke producer of the State of Alabama, and it is also repugnant to the provisions of the Constitution and the laws of the United States in numerous other particulars which will be shown on the trial of this cause.

That the said act is unjust, tyrannical, oppressive, and an unwarranted interference with the right of citizens freely to contract and carry on trade and commerce, and contrary to individual liberties.

Wherefore respondent prays that these defenses be maintained, and that the said act No. 147 of the acts of the regular session of 1888 be decreed contrary and repugnant to the Constitution of the State of Louisiana and of the United States and therefore null and void, and accordingly that there be judgment rendered rejecting the plaintiff's demand and hence dismissing your respondent with costs.

10 And respondent prays for all such and further judgments and decrees as may be consonant with law and justice and

the court be competent to render; and, as in duty bound, your respondent may pray, etc., etc.

W. S. BENEDICT,
H. C. CAGE,
Attorneys of Respondent.

BAYNE, DENEGRE & BAYNE,
Of Counsel.

Notices of trial for Sept. 7 issued and served on plaintiff and defendants on Sept. 5, 1888.

Testimony taken at the first city court of the parish of Orleans in the above entitled and numbered cause on the 7th day of September, 1888, in open court—the Hon. H. H. Price, judge, presiding—on behalf of defendants herein.

Appearances.

Hon. W. H. Rogers, attorney general, of counsel for the plaintiffs herein.

Messrs. Hugh C. Cage and Geo. Denegre, of counsel for defendants.

Admission.

It is hereby admitted that the coal-boat No. 1098, mentioned in the claim, was the property of the Pittsburg and Southern Coal Company; that the said boat-load of coal was sold, as alleged, to Messrs. W. C. Coyle & Co., on the 30th day of August, 1888—
11 that is, without having been gauged by the two coal-boat gaugers appointed by the State under act No. 147 of the acts of 1888; that the said coal-boat was gauged by Mr. Deverges, a professional coal-boat ganger, and that the method employed by him was that described in section No. 4 of the act of 1888, and, further, that no application was made to State gaugers appointed under this act and the boat was never gauged by them.

O. A. SCHNEIDAU, Esq., sworn on behalf of defendant, in open court deposeth and saith:

Direct examination.

By Mr. HUGH C. CAGE:

Q. M. Schneidau, what is your business?

A. I am the agent of the Pittsburg and Southern Coal Company.

Q. Where is the domicile of the Pittsburg and Southern Coal Company?

A. In Pittsburg, Pennsylvania, sir.

Q. Under the laws of what State or country is this corporation organized?

A. Under the laws of the State of Pennsylvania or Virginia; I do not remember which.

It is hereby agreed that a copy of the charter of said company shall be filed of record herein.

Q. What is the business of that company, Mr. Schneidau?

A. It consists in selling coal in the Southern markets.

12 Q. In what manner is that business carried on?

A. By wholesale in boats and barges on the river.

Q. About what is the average capacity or tonnage of these vessels in tons?

A. Well, the barges contain about 400 to 450 tons and the boats more—from 900 to 950 tons.

Q. Where are these boats loaded, Mr. Schneidau, and with what?

A. With Pittsburg coal, on the Mississippi and Ohio rivers.

Q. When do they become the property of the Pittsburg and Southern Coal Company?

A. On their arrival here they are purchased by the company, or at the different stations along the river—at Vicksburg, Memphis, Baton Rouge, and other points. The method of business is to protect those who buy or purchase the boat-loads of coal. It is principally coal business. These are not to be at their risks until delivered at the various points along the river. If lost between there, the loss falls on the other party. The contract is made as soon as it arrives, and until then is at the risk of the miners.

Q. In Louisiana what disposition does that company make of its boats?

A. It sells them to dealers, planters, and other purchasers.

Q. Does the company sell any quantity less than a boat-load?

A. No, sir; not less than a boat or barge.

13 Q. Where are these boats and barges during the interval between the time when they become the risk of the company and when they are sold?

A. They lie at the different depots along the river, some at Memphis, some at Vicksburg, some at Natchez, Baton Rouge. Generally the boats are lying along the river at Willow Grove below town.

Q. They lie in the river?

A. Yes, sir.

Q. Right up to the bank?

A. Yes, sir.

Q. And to each other?

A. Yes, sir.

Q. How do you sell this coal?

A. By the gauge measurement; by the barrel.

Q. How is that ascertained?

A. By a regular gauger that we have been accustomed to employ.

Q. Now, what is the manner in which you make the sales to your customers?

A. It depends altogether upon how they buy. Some buy at ten days; some cash; generally at sixty days.

Q. I refer, Mr. Schneidau, to the manner of determining what amount of coal you are selling them.

A. By these certificates issued by the gaugers.

Q. They are accepted by your customers as correct?

A. Yes, sir.

Q. Now, in case your customers are not willing to accept this, what is done?

14 A. I do not know of an instance where I have had to regauge a boat that I remember of.

Q. But in that case, what would you do?

A. Why, have them regauged; there are three gaugers; either one of the three can regauge them. We never had any such case.

Q. The gauge consists in ascertaining the cubic measurement of the boats, does it not?

A. Yes, sir.

Q. And any of your customers have the right of buying or not, as they see fit?

A. Yes, sir; of course.

Q. Now, in the case of the coal-boat No. 1098, where did that boat come from?

A. Pittsburg.

Q. Now, whose property was that boat on the 30th day of July, 1888?

A. The property of the Pittsburg and Southern Coal Company.

Q. To whom did you sell it?

A. To Messrs. W. G. Coyle & Co.

Q. By whom was it gauged?

A. By Mr. Deverges.

Q. Where was it lying?

A. At the Willow Grove fleet, in the Mississippi river, just below the exposition.

Q. On which side of the river?

A. On this side, at our own landing, which belongs to the company.

Q. By what system did Mr. Deverges measure the boat?

15 A. By the system adopted by the new State law.

Q. Was any one else interested in that transaction except your company and the Messrs. Coyle & Co.?

A. No, sir.

Q. What did Messrs. Coyle & Co. say about the gauge of the boat you sold them?

A. They never made the slightest objection.

Q. Did Mr. Coyle require a certificate from these State officials that a certain amount of coal was in that boat or otherwise?

A. No, sir.

Q. Did you desire any such statement from the State officials?

A. No, sir.

Q. Would it have been of any benefit or advantage to you?

A. No, sir.

Cross-examination.

By Hon. W. H. ROGERS, attorney general:

Q. Who are these gentlemen that you speak of?

A. Coal gaugers that have been gauging coal for several years here.

Q. Are they regularly employed as coal gaugers by you?

A. They are employed by us and any one who requires their services.

Q. What do you pay them for gauging?

A. I do not do that part of it; the shippers do so; the shippers of the coal do that, and the company buys the coal on their certificate.

16 Q. The coal is the company's coal only after it arrives at its destination?

A. Yes, sir.

Q. These gentlemen, then, are employed by the shippers of the coal, and they gauge for them after arrival here, and you buy on their measurement?

A. Yes, sir.

Q. The Pittsburg and Southern Coal Company buys the coal at their gauge, and when it sells does it sell on that gauge?

A. Yes, sir.

Q. Now when you sell you do not have it regauged?

A. No, sir.

Q. In other words, then, they had never gauged for you?

A. No, sir.

Q. The Pittsburg and Southern Coal Company had never had the coal gauged themselves?

A. No, sir; never themselves.

Q. How many gaugers are there?

A. Three.

Q. Can any one else gauge but them?

A. I presume so.

Q. Would you accept the certificate of anybody but them?

A. Not unless we knew the parties were qualified.

Q. Do you pay for boat and barge the same?

A. The shipper pays the same. They have made no distinction heretofore.

17 Q. Now, have you particular coal gaugers for particular coal or do they gauge indiscriminately?

A. There are certain parties that certain gaugers gauge for.

Q. How is that done?

A. There are certain houses in the Pittsburg trade that they gauge for.

Q. Name some of them.

A. Messrs. Fawcett & Sons; De Verges gauges all their coal.

—. Mr. De Veges gauges for Faucet & Sons. Who else gauges that coal with him?

A. I do not know of any.

Q. Then it is only one gauger that gauges? Now, who else sends coal down here?

A. Messrs. Horner & Roberts; Mr. De Verges gauges for them. There is the Grand Lake Coal Company who has Mr. Tremoulet.

Q. Now, who else?

A. Mr. Stout gauges for Messrs. John A. Wood & Sons.

Q. Who gauges for Walton, in Pittsburg?

A. Mr. De Verges.

Q. Now, these are the gentlemen that sell their coal to the Pittsburg and Southern Coal Company?

A. Yes, sir.

Q. How long has the Pittsburg and Southern Coal Company been in operation?

A. Since December, 1886.

Q. Who composed the Pittsburg and Southern Coal Company?

A. Messrs. Fawcett & Sons, Walton & Co., John A. Wood & Sons, Hornor & Roberts, Grand Lake Company, and Marmet Company.

Q. Who gauges for the Marmet Company?

A. Mr. Tremoulet.

Q. They are the regularly employed gaugers?

A. Yes, sir.

Q. In other words, these men select their own gaugers and you accept the gauge done by these men?

A. Yes, sir.

Q. You are the agent of the Pittsburg and Southern Coal Company; therefore the Pittsburg and Southern Coal Company is a combination of the shippers of coal in Pittsburg, and therefore is not the question of selling coal to the company you represent merely a result of this combination of the shippers at Pittsburg?

A. That I cannot say. I know they purchase upon these gentlemen's gauges.

Q. Can anybody in the city of New Orleans buy a boat-load of coal from Messrs. Fawcett and Sons?

A. Yes, sir; for——

Q. Is it not a matter of fact that all the coal that comes to the city of New Orleans and its markets from these gentlemen is bought by and is consigned to the Pittsburg and Southern Coal Company?

A. Yes, sir.

Q. It is not also a matter of fact that any one who wants that coal has to buy it from you?

A. Yes, sir; I am their only agent.

Q. Now, is it not a fact that up to the time of the formation of this company, up to the time when these gentlemen went into a combination, that they sold directly in the city through their agents and representatives?

A. Yes, sir.

Q. Is it not a matter of fact that each one of these men or their establishments sell through their commission merchants or through their agents?

A. Yes, sir.

Q. Is it not a matter of fact that Mr. Walton was represented by Mr. Lambert, of this city?

A. Yes, sir.

Q. Ferdinand Roberts by Mr. Coyle?

A. Yes, sir.

Q. Whom did Desforges represent?

A. The Grand Lake Coal Company.

Q. These gentlemen receive a commission for selling their coal, as agents of these people, do they not?

A. Some of them do and some of them do not; I cannot say.

Q. I would like to know what arrangement you make with people still in the coal business?

A. They buy from us and we do not allow them a thing.

Q. Do you not allow them one cent per barrel?

A. We allow a commission for delivering the coal, but not where they buy themselves. The planter buys from the company,
20 and we allow them one cent per barrel for delivering it. We have no tugs; our company has no facilities for delivering the coal, and we allow them when selling to a planter one per cent. commission.

Q. In other words, you allow these gentlemen one cent a barrel for selling to planters?

A. Yes, sir; we sell to planters and take the planters' paper. We allow them one cent for buying coal on delivery. That was the reason it was allowed.

Q. How much do you charge the planter?

A. One cent additional.

Q. You charge the planter more money than you charge the dealer?

A. Yes, sir; because we pay that one cent to the dealers.

Q. Where are these coal-boats that these men deliver?

A. At their different depots in the Mississippi river. They take them from our different depots. Most of the coal dealers have tugs and facilities for delivering.

Q. How many coal dealers have the facilities?

A. Most of them.

Q. It makes no difference then where you sell to a planter your coal, you charge him 1 cent additional?

A. Yes, sir; we do ordinarily, and with the case of these gentlemen.

Q. Now, what do you do with coal when you sell to them?

A. We do nothing; we sell either cash or sixty days.

21 Q. Then you have one price for planters and another in New Orleans?

A. It nets the same price. That cent charged the planter we pay up.

Q. Did not these boats come down to you with a certificate gauged in Louisville?

A. No, sir; I never have seen it; I have seen probably one or two, but they never send Louisville certificates down here.

Q. Mr. Schneidau, who is the president of your company?

A. Mr. Joseph Walton.

Q. Who is the treasurer?

A. A man by the name of Gibbons.

Q. He is, then, in the employ of the company?

A. Yes, sir; at Pittsburg.

Q. Where do you regulate the price of your commodity coal? From whence do you get your orders?

A. From Pittsburg.

Q. Who regulates it, your company?

A. Yes, sir.

Q. Can you explain how it is that your company undertakes and regulates the price of coal in the city of New Orleans, for instance, from Pittsburg, Pa., when, according to your statement, they do not own the coal at different points along the road, at Baton Rouge, Natchez, and other places?

A. They have the right to put the price they like upon it—on their own products.

Q. At what price do they fix—

22 A. That I do not know, sir. I have nothing to do with that. I know nothing about it.

Q. Now, Mr. Fawcett, [illegible]—is it all composed of those men [illegible] and the same thing—how can you explain to me the change from the railroad's [illegible] capacity, as from the statement the agent [illegible] to require the coal to be placed in the [illegible] company have to fix its value in the city of New Orleans. And—

Q. The company [illegible]?

A. I do not know. [illegible] the company, and that is done at the office there, and I have nothing to do with that; there are [illegible] there.

Q. I want to know what [illegible] now?

A. Messrs. Bel[illegible] Bel[illegible] [illegible] now under way, and we [illegible]

Q. Is the [illegible]

A. Those are the [illegible]

Q. Those [illegible] Messrs. [illegible] are [illegible] independent from you?

A. Yes, sir.

Q. And it regulates [illegible] to compete with them?

A. These [illegible]

23 Q. And did it [illegible]?

A. No, sir; it [illegible] almost the same thing; naturally we [illegible] with anything.

Q. You have some [illegible] trade also, have you not?

A. Yes, sir.

Q. And you gentlemen [illegible] instead of dealing with [illegible]

A. It is the Pittsburg [illegible] calls it what he pleases. It [illegible] uniform rate for coal; so coal never went [illegible] uniform the whole year around.

Q. Now, Mr. Schneidau, I [illegible] commercial life, but it strikes me that the [illegible] in their combine and some of the [illegible] to me, and

I wish to get at the bottom of that, if I can. The ordinary rule of commercial profit is, as I understand it, that which accrues to an individual in the way of profits, which comes from the sale of this commodity, by exchange or barter, as the thing may be. For instance, Mr. Fawcett is engaged in coal business; Mr. Fawcett would have the purpose to sell his coal, for he works no mines, but buys it himself; he calculates his expenses, interest upon his money, wear and tare, as you put it, to coal, and his profit is anything he
24 receives over when he sells. He makes a loss or gain for the purpose of that company and that trade, his relations with it are at the end. Now, I understand from you that in addition to that, Mr. Fawcett buys his coal and mines it and barters it and sells it to some of his other friends and gentlemen in the same business with him?

Objection by Mr. Denegre: I object to this cross-examination as *incorrect*. The Pittsburg and Southern Coal Company as a combination is not on trial. The only question here is whether this act has been violated. Objection sustained by the court.

By Judge Rogers:

Q. Mr. Schneidau, will you please tell me if you know any gentleman by the name of W. W. O'Neal.
A. Yes, sir.
Q. Who is he?
A. A Pittsburg shipper.
Q. What firm does he belong to?
A. O'Neal & Co.
Q. Does he belong to the Pittsburg and Southern Coal Company?
A. Yes, sir.
Q. You represent him too?
A. No, sir; I do not represent him; I represent the company.
Q. Of which he is a member?
A. Yes, sir.
Q. Do you know Mr. John A. Bunter?
A. Yes, sir; I do.
25 Q. Who is he?
A. The partner of the firm of Joseph Walton & Co.
Q. The member of the firm who you mentioned in your testimony heretofore?
A. Yes, sir.

By Mr. Cage:

Q. Mr. Schneidau, you are exclusively in the coal business and sell great quantities of it, do you not?
A. Yes, sir.
Q. Is there any coal produced in the State of Louisiana?
A. Not that I know of.
Q. Is there any coal sold here, the product of the State of Louisiana, that you know of?
A. No, sir.

Q. From what other States is coal brought into the State of Louisiana for sale, except from the State of Pennsylvania?

A. Alabama, and there is a small quantity of it that comes from the State of Tennessee—very little of it, though.

Q. How is the Alabama coal brought here?

A. Generally comes by rail.

Q. Exclusively by rail, is it not?

A. Yes, sir.

Q. Does it come into competition with the Pennsylvania coal?

A. Yes, sir.

Q. Mr. Schneidau, with the exception of that small quantity of Tennessee coal that you spoke of, is there any other coal sold
26 in boats in the State of Louisiana except Pennsylvania coal?

A. No, sir.

Q. All of the Alabama coal is brought here by rail?

A. Yes, sir; in trains.

Q. It does not come in boats at all?

A. No, sir.

Q. Mr. Schneidau, to go back to something that I asked you about a little while ago, the Pittsburg and Southern Coal Company has its domicile in Pittsburg, has it not?

A. Yes, sir.

Q. All of the contracts are made up there, are they not?

A. Yes, sir.

Q. Now, you say that this boat-load of coal was bought from Fawcett Sons?

A. Yes, sir.

Q. They are domiciled in Pennsylvania?

A. Yes, sir.

Q. And delivered by him in Louisiana?

A. Yes, sir.

Q. And that is the method that this company pursues?

A. Yes, sir.

Q. If the boat is lost on the trip down the river, the loss does not fall on the Pittsburg and Southern Coal Company?

A. No, sir.

Q. That's the contract of sale?

27 A. Yes, sir; that's the way I understand it.

Q. That's the way you understand it?

A. Yes, sir.

Q. But all of the contracts and agreements are made in Pennsylvania?

A. Yes, sir.

Q. Now, Mr. Schneidau, have you taken out any license in the State of Louisiana?

A. Yes, sir.

Q. What does that license permit you to do?

A. Sell coal by the wholesale in the State of Louisiana.

Q. Do you sell coal in any other way except by wholesale in the State of Louisiana?

A. No, sir.

Q. Do you sell any other coal except the coal of the Pittsburg and Southern Coal Company?

A. No, sir.

Q. Who pays that license—yourself or the company?

A. The company pays it.

Q. You are simply the representative of the company?

A. Yes, sir; that's all.

Q. Its agent and servant?

A. Yes, sir.

Q. It pays that license in order to permit you to transact business in the State of Louisiana?

A. Yes, sir.

Q. Have you paid the license for the company for the year 1888?

A. Yes, sir.

Q. Paid by the company for you?

A. Yes, sir.

Q. Paid also to the city?

A. Yes, sir.

Mr. W. G. COYLE, sworn on behalf of the defendant, says:

By Mr. CAGE:

Q. Mr. Coyle, you are a member of the firm of W. G. Coyle & Co.?

A. Yes, sir.

Q. Doing business in the city of New Orleans?

A. Yes, sir.

Q. Buying and selling coal?

A. Yes, sir.

Q. What is your business, wholesale or retail?

A. Retail.

Q. Did you, on the 20th of August, purchase a boat-load of coal from the Pittsburg and Southern Coal Company?

A. Yes, sir; I did.

Q. By what measurement was that boat-load of coal sold?

A. It was sold to me by the measurement required by the new State law; that's the words used to me at the time—sold to me by the requirements of the new State law.

Q. Were you satisfied with the measurement of the coal, Mr. Coyle?

A. I made no objections to it.

Q. You did not require that it should be gauged by the new State gaugers appointed by the governor?

A. No, sir. I made no requirements whatever. It was under those conditions, that it was in accordance with the new State law.

Q. You agreed on the price?

A. Yes, sir; there was nothing between us.

Cross-examination.

By Judge ROGERS:

Q. Did you get a certificate from the gaugers who did gauge the boat?

A. Yes, sir.

Q. Who signed it?

A. R. De Verges, as has been customary heretofore.

Q. Only one man?

A. Yes, sir; one man.

Q. Was it signed by Mr. Melancon or Mr. Sweeney?

A. No, sir.

Q. It was not signed by the regular appointed State gaugers?

A. No, sir.

Q. You know them to be the regular appointed State gaugers?

A. I heard it; I know it by common report; newspaper rumor.

Q. They did not gauge this coal-boat and coal?

A. Not to my knowledge.

Q. Was signed simply by Mr. De Verges that he had gauged it in accordance with the new State laws?

30 A. Yes, sir; it was so represented to me and accepted it as such, and the figures on the certificate show it, and I accepted it as true.

Q. You did not employ Mr. De Verges?

A. No, sir.

Q. Who employed him?

A. The original owner of the coal or the shipper of the coal from the city of Pittsburg.

Q. In this particular case the original owner of it happened to be Thomas Fawcett and Sons?

A. In this particular case I do not know; I was only giving you the custom.

Q. You bought from the Pittsburg and Southern Coal Company?

A. Yes, sir; I did.

Q. And before you purchased from them?

A. I required this certificate at the time of the purchase.

Q. And it was handed to you with the bill, and you found it to be correct?

A. Yes, sir.

Q. And gauged by Mr. De Verges?

A. Yes, sir.

Q. You are a member of the firm of the Pittsburg and Southern Coal Company?

A. No, sir; I have not that honor; it's only a very rich man that can belong to it.

Q. Were you not formerly the agent of Hornor & Roberts?

A. Yes, sir; but the firm of Hornor & Roberts are now

31 members of the Pittsburg and Southern Coal Company, and they have no longer any use for me.

Q. All of those gentlemen who formerly did business here have joined the combination?

A. All former shippers to this port.

By Mr. CAGE: I renew to that question and answer the objections previously urged, and the court makes the same ruling.

By Judge ROGERS:

Q. Mr. Coyle, from whom do you buy Pittsburg coal?
A. From the Pittsburg and Southern Coal Company.
Q. How about this firm of Briggs & Co.?
A. What do you want to know about it?
Q. Don't you buy from them?
A. If I bought any Pittsburg coal from them? No.
Q. What do they deal in besides Pittsburg coal?
A. They deal in coal and slack. I never bought any Pittsburg coal from them. They deal in Pitts-burg coal only.
Q. To a large extent?
A. No, sir; small.
Q. Not enough to supply the demand?
A. No, sir; they are a recent thing; started since the pool, and they never had any existence before. They are a very small concern.
Q. They don't compete with the other?
32 A. Well, it depends upon the latitude that you give to the word "competent." They cannot in quantity. They bring in about one-tenth; something like that. I mean that the market cannot depend upon them at all.

Mr. R. DE VERGES, sworn on behalf of the defendant, says:

By Mr. CAGE:

Q. Mr. De Verges, you reside in New Orleans?
A. Yes, sir.
Q. What is your occupation?
A. Coal gauger.
Q. How long have you been at that occupation?
A. I have been at that business for five years.
Q. For whom did you gauge coal during those five years?
A. Different parties: Hornor & Roberts, Fawcett & Sons, the Grand Lake Coal Company, and at one time for W. H. Brown; also for Briggs.
Q. Is the gauging of coal a regular profession in this place, Mr. De Verges—is it or is it not? Is there any such profession known as coal gauger?
A. I don't know whether there is — not; but I have been living at that business for about five years, call it a profession or anything that you like.
Q. Do you know anybody else in this city whose occupation is the same as yours?
A. Yes, sir; there are three of us: Mr. Tremoulet and Mr. Stout.
Q. And you all make your livelihood by following that calling?
33 A. Yes, sir.

Q. What do you charge for gauging a boat-load of coal?

A. We used to get ten dollars a boat and ten dollars for a barge.

Q. Did you gauge a barge or coal-boat No. 1098?

A. I could not tell you exactly about the number; it's very likely that I did. There are so many of these boats that I cannot recollect all of the numbers.

Q. Have you gauged any of the coal-boats under the provisions of the new coal-gauging act?

A. Yes, sir; I have gauged all of the stock that is on hand for the parties that I have worked. I have gauged all of the coal.

Q. Did you gauge any for the Southern Coal Company?

A. It is in the hands of the Pittsburg and Southern Coal Company, but it is for those gentlemen—for our firms in Pittsburg who employ us.

Q. Do you know as a matter of fact whether you did not gauge this coal sold to Coyle & Co.?

A. I cannot tell you about that; perhaps I did. If it is one of Fawcett & Sons' boats, I have, sir. There are so many of them I cannot tell you exactly about the number.

Q. Did you give a certificate?

A. Yes, sir; I did.

Q. Is this your certificate?

A. (Document shown witness.) Yes, sir.

By Mr. DENEGRE:

34 Q. Upon whose recommendation were you appointed?

A. The coal merchants in New Orleans—in fact, the purchasers of coal.

Q. Then the sellers of the coal appoint you as gaugers on the application of the purchasers?

A. Yes, sir; we are recommended by both parties.

Q. Any objection ever made to your gauging?

A. I never heard of any—in fact, I know of no complaints.

Q. It was the result of an understanding between the purchaser and the sellers that you, Mr. Tremoulet, and Mr. Stout were appointed?

A. Yes, sir; that — the way that we come to get our appointments.

Cross-examination.

By Judge ROGERS:

Q. Who paid you?

A. The shippers of the coal generally paid the bill for whom we worked.

Q. You have been gauging coal for about five years?

A. Yes, sir; about that.

Q. When did you change your mode of gauging?

A. As soon as the act was passed we were required to gauge the coal according to the law.

Q. Who required you?

35 A. The Pittsburg men themselves and the different owners. I was in Pittsburg and they told me to come back here and gauge the coal according to the new law. I went there to solicit the position or appointment from them, and I had the recommendation of the Sugar Planters' Association and the different purchasers of coal here, and I went there to solicit their trade, and they told them that they would give me the work.

Q. But under this act the governor appoints?

A. Yes, sir.

Q. Well?

A. Well, we went there to get the recommendation because we thought that we had the right to gauge anyhow. We wanted to keep in the business and thought that we had the right to and we intended to remain.

Q. You know all about this law?

A. Yes, sir.

Q. You have informed yourself regarding it?

A. I was interested in the matter and I have read it attentively.

Q. Does that new law change the mode of gauging the coal?

A. Yes, sir; entirely.

Q. In what way?

A. It makes the barrel larger.

Q. Then, therefore these gentlemen told you to go to work under this new law?

A. Sir?

36 Q. You have been serving under this new law at the request of these people?

A. They told me to go to work and change the mode of gauging the coal so as to comply with the new law; that it was the law and they had no objection to it—that is, the size of the barrel.

Q. Before they appointed their own gaugers?

A. No, sir; they had nothing to do or say in the matter at all. We were recommended to the governor, and on the strength of that we went there to get their trade.

Q. If they had no objection to the law, what's all this trouble about, then?

A. They had objections to the gaugers appointed, but no objection to the size of the barrel.

Q. That was after they were appointed?

A. Yes, sir.

Q. After they were appointed they objected to the gaugers?

A. Yes, sir; they thought that they had the right to employ who they wanted.

Q. That's the idea; they thought that they had the right to employ whomsoever they chose?

A. Yes, sir.

Q. And there is a very material difference in this law in the measurement of the coal?

A. Yes, sir; there is a very material difference. A barrel is larger here than anywhere else.

Q. Is it not the same as it is at Louisville, Ky.?

A. No, sir.

37 Q. Was not this act prepared by the Sugar Planters' Association just as it was in the manner that it passed?

A. Sir?

Q. Is not this the act of the legislature which was prepared by the Sugar Planters' Association?

A. I do not know who prepared it; I have heard that the Sugar Planters' Association favored it; whether true or not, I do not know.

Q. You think only one man is sufficient; the law requires two men to sign the certificate?

A. No, sir; it never required two men.

Q. Well, the law does?

A. I don't think that it says so; it says when one or the other is called upon. It would be useless. I do not see what two men would do.

Q. Well, that's what the law says.

A. Well, I am not a lawyer. I thought that it meant that either one of them would answer when called upon.

By Mr. CAGE:

Q. Mr. De Verges, before the passage of this law you gauged the barrel measure according to the then existing laws on the subject?

A. According to the custom; I did not know that there was any law on the subject. $2\frac{1}{2}$ to a barrel.

Note by Mr. CAGE: I offer in evidence section 3925 of the Revised Statutes of Louisiana of 1876; also section 3926 of the Revised Statutes of Louisiana.

38 By Judge ROGERS:

Q. It requires $2\frac{6}{10}$?

A. Yes, sir.

Q. And you sold $2\frac{1}{2}$?

A. Yes, sir; and it makes a difference of 76 cubic inches to the barrel.

By Mr. CAGE: I also offer in evidence to prove *eo ipso* act No. 147 of 1888.

Revised Statutes of Louisiana.

SECTION 3925. There shall be in this State a dry measure, to be known under the name of barrel, which shall contain three and a quarter bushels, according to the American standard, and shall be divided into half and quarter barrels.

SEC. 3928. Coal shall be sold by the barrel or bushel measure; grain shall be sold by the barrel, bushel or weight; the legal weight of a bushel of wheat shall be sixty pounds; of a bushel of corn, fifty-six pounds; of a bushel of oats, thirty-two pounds; of a bushel of barley, thirty-two pounds, and of a bushel of rye, thirty-two pounds.

No. 147.

An act entitled an act for the appointment of two coal and coke boat gaugers, to fix their compensation, and to define their duties.

SECTION 1. Be it enacted by the General Assembly of the State of Louisiana, that there shall be appointed by the governor, by and with the advice and consent of the senate, two coal and coke boat gaugers, who shall have their offices in the city of New Orleans: provided, however, that the governor shall have the power to remove from office any coal and coke boat gauger upon satisfactory proof made to him of negligence and official misconduct.

SEC. 2. Each of said gaugers shall give bond, payable to the governor, or his successor in office, with two sufficient sureties, in the penal sum of five thousand dollars, conditioned for the faithful performance of the duties required by law.

SEC. 3. It shall be the duty of said gaugers when called upon for that purpose, to gauge any coal or coke boat or barge in the port of New Orleans or the State of Louisiana.

SEC. 4. Such gauging shall consist in reducing the length, breadth and depth, inside measurement, of boats or barges, deducting all obstructions and displacements, into cubic inches and dividing said cubic inches by twenty-six hundred and eighty-eight (2688), thus ascertaining the net measurement in bushels. Two and six-tenths ($2\frac{6}{10}$) bushels shall constitute a barrel.

SEC. 5. In all cases it shall be the duty of the gaugers, or either of them, to respond promptly to any call made for their or either of their services, and to furnish a full and detailed certificate of gross measurement of the boat or barge gauged, and the allowance made for obstructions and displacements.

SEC. 6. The fee for gauging or regauging shall be ten dollars ($10), for each boat, and five dollars for each barge, to be paid by the seller, except as hereinafter provided.

SEC. 7. The purchaser of any boat or barge of coal or coke, shall have the privilege of calling upon the said gauger or gaugers to regauge boats or barges in all cases where the original gauge is not satisfactory, and such regauge shall be adopted as the correct measure. If the original gauge shall be found to be correct, then the purchaser shall pay the fee for regauging; but if the regauge show a less measure, then the seller shall pay the fee.

SEC. 8. No boat-load of coal or coke shall be sold in this city or State until it has been inspected as provided for in this act. And any person who shall sell a boat-load of coal or coke that has not been gauged as aforesaid, shall be liable to a penalty of fifty dollars ($50) for each boat or barge as sold, to be recovered, with costs of suit, in any court of competent jurisdiction, for the benefit of the Charity Hospital of New Orleans.

SEC. 9. The term of office of said gaugers shall be four years. This act to take effect from and after the passage.

S. P. HENRY,
Speaker of the House of Representatives.
JAMES JEFFRIES,
Lieutenant Governor and President of the Senate.
FRANCIS T. NICHOLLS,
Governor of the State of Louisiana.

A true copy from the original.

JOS. GEBELIN,
Assistant Secretary of State.

11 Mr. JOHN S. WALLIS, sworn on behalf of the plaintiff, says:

By Judge ROGERS:

Q. Mr. Wallis, are you a member of the Sugar Planters' Association?

A. Not of late years. I was among the number of gentlemen present. Any one interested in the raising of sugar in Louisiana are always invited to be present at their monthly meetings.

Q. Were you on any committee appointed by that body?

A. Yes, sir; I was appointed on a committee to investigate this coal subject. I was chairman of the committee, and——

Q. Did you make a report?

A. Yes, sir; several of them.

Q. Several of them?

A. Yes, sir.

Q. Have you got those reports with you?

A. I have a copy of one of them in my hands.

By Mr. CAGE: I object to its introduction on the grounds:

1. *Res inter alios acta.*

2. That we cannot be bound by any of the allegations contained therein, nor can it prove the correctness of anything therein stated.

By Judge ROGERS: I propose to offer these as the proceedings of the Sugar Planters' Association in regard to this very subject. In so far as the statements are therein concerned, they present

12 exactly the condition of things which those gentlemen presented. This report embodies this very act presented to the legislature, and shows the exact condition of things in the mind of the law-maker as the act was presented, and for the purpose of showing that the act covers the object intended.

By the COURT: I think that it would be admissible for you to show by this witness that the association of which he speaks, the Sugar Planters' Association, recommend a change in the measurement of coal and the method in which it should be measured, and any other recommendations which they had made to the State of Louisiana or which they thought were corrections to be made in the present method of measuring coal in the State of Louisiana. I think that would be in contradiction of the latter part of the answer, and the objections are overruled.

By Judge ROGERS:

Q. This is a correct copy of the report?

A. Yes, sir.

Q. Made by you as chairman of the committee?

A. Yes, sir.

Q. This report of yours sets forth fully all of the facts connected with this controversy?

A. The object, in a very few words, of the committee was to establish a system of actual tares in connection with coal in the city of New Orleans, as it is here with every article of commerce. When we buy a barrel of lard we take the gross weight and the
43 weight of the package, and the buyer pays only for net weight, while in coal we found that when we bought a boat that the proper tare was not deducted. When we bought by the Louisville gauge, the recognized gauge down to Memphis, we found that it was regauged here according to the New Orleans system, and we lost 350 to 500 barrels, and we therefore thought that it was proper to try and establish a system of tares in conformity with the rest of things and let the vendors put whatever price they chose on the commodity. That is the length and breadth of the subject.

For instance, in my experience as the president of the Louisiana Sugar Refinery Company, I bought a boat-load of coal from the Southern Coal Company and I found that according to the New Orleans gauge there would be either ten to twenty barrels over or loss—pretty near right according to their system—but when I bought according to the Louisville gauge I found that the same boat would give me a gain over the New Orleans gauge of from 350 to 500 barrels, and it's to our interest as refiners and to the interest of the Louisiana sugar planter to establish an actual tare without respect to the price. That's the whole thing in a nutshell.

Q. And your report is based on the theory which you have now stated?

A. We thought that the thing was so patent that these gentlemen in Pittsburg would, and they did, admit and acknowledge that the thing was correct, and we thought that they would gracefully yield, but since I have had a little actual experience. We buy
44 a boat-load of coal every three weeks and we have kept an account of this thing and we have verified all of these facts, which were then facts according to the best authority, and we have verified them straight along.

Q. You have verified them straight along and therefore of your knowledge?

A. Yes, sir; of my own knowledge.

Q. And this present bill was suggested by you gentlemen?

A. Yes, sir; I aided Mr. Goldwaite in framing that bill according to the wishes of the Louisiana Sugar Planters' Association. It was unanimously reported upon by the committee.

Cross-examination.

By Mr. CAGE:

Q. Mr. Wallis, you were, as I understand you, one of the principal movers in this matter?

A. Yes, sir; I was unfortunately so situated. I went in with the other gentlemen, and they good naturedly put most of the work on me. They put a good deal of it on me.

Q. Was it not understood among you gentlemen that in case you changed the mode of measurement that these gentlemen would necessarily increase their price; for example, you knew that in the system of measurement adopted by you for your computations there was a difference of 500 barrels of coal; it was well known to all parties, was it not? Did you not expect certainly that there would be an increased price charged for the 500 barrels?

45 A. That was a matter of private opinion; some thought so and some thought not. Because a great many articles have changed in measurement in my time, since 1843, that neither changed the price at all.

Q. Now, Mr. Wallis, under the old method of gauging, a barrel of coal ran from 180 to 190 pounds?

A. About 180 pounds.

Q. Now, under the new measurement, I understand that it will be (220)?

A. I never stated it that way; I have never figured it.

Q. That's a fact, is it not, that under the present system of gauging by the Louisville gauge such a result will be attained?

A. Under the present system of gauging by the Louisville there will be from four hundred and fifty to five hundred barrels more, because there is 110 barrels more put on by the change from (4) four-sevenths to (6/10) six-tenths. The Louisville gauge is from 350 to 500 barrels more.

Q. And the barrel itself is larger by twenty to thirty pounds?

A. That's a matter of detail that I have never gone into. I never weighed the barrels.

Q. Now, both buyer and seller under the old system of gauging knew each, the one what he was buying and the other what he was selling?

A. Well, I have never found anybody that knew. I have been a planter in Louisiana and I have gone among my Louisiana

46 Creole friends, and I have found some dealers that simply—well I found that there was a divergence of opinion, and in fact that it depended upon the talent of the vendor and the intelligence of the purchaser.

Q. Now, Mr. Wallis, you purchased a coal-boat a day or two before this act went into effect?

A. The next day.

Q. You did not wait until the next day to get the benefit of your own law?

A. That's a branch of the mercantile business that you have got to be——

By Judge ROGERS:

Q. The idea to be conveyed is that you bought for the purpose of avoiding the ten dollars for the inspection?

A. No, sir; there was no preference in it at all. It was simply a matter of calculation. We did not have coal for more than three or four days at the latest, and we always buy three or four days in advance.

By Mr. DENEGRE:

Q. You knew that you were buying under the old gauge?

A. Yes, sir.

Q. That was the standard?

A. Well, I don't kn——

Q. There was a standard formerly, was there not?

A. Yes, sir; but I never knew what I was about perfectly.

Q. The New Orleans gauge has been the gauge here since and before the war?

47 A. I suppose; but for the last thirteen or fifteen months we have bought probably a little more coal from the Briggs Company, who have been selling by the Louisville gauge. I bought about fifteen months ago from them, and since then we have not bought half from the Southern Company, and we have gained from the Briggs concern from three to four hundred barrels to a boat.

Q. And have given a larger price?

A. Because we get more gauge.

Q. That's it. I understood that the object of this law was to establish an actual tare. Was there not an actual tare before?

A. No, sir; of course not, and for this reason: A post ain't coal; a pump box ain't coal; a gunnel ain't coal; any wooden obstruction in the boat ain't coal; and they take the area of the pump box, the area of these gunnels and other obstructions, check posts, etc., and they dump it all in as if it was solid coal. There was no actual tare at all. It was their construction of tare, but it was not tare. The area of a boat is as shown in that document. The difference between the two is perfectly well understood and easy to ascertain and known to all of the coal dealers here present. It was not actual tare; that's just the trouble about it.

Q. Then you say that the former method of measurement was not a fair one?

A. That's plain.

Q. But still there was a method of measuring coal which everybody who bought coal understood?

48 A. Everybody understood except people who did not buy in that way. There has been no time in the last twenty years that there has been any persons selling here on the Louisville gauge.

Q. When you bought on the Louisville gauge you knew what you were doing?

A. When I bought from the Southern I knew that I bought by the New Orleans gauge. When from Briggs by the Louisville.

Q. And your reason for the passage of this law was to gain to the buyer this increase of coal?

A. No, sir; the actual reason for the passage of the law was to get this deduction of posts, pump boxes, etc., from the actual area of the boats, irrespective of any gain at all. The gain was not thought of at all, because a great many persons understood that the Southern Coal Company have within themselves the power of increasing the price of the coal. The gentlemen of the committee, Mr. Godchaux, Mr. Calder, and Col. Bush, were of the opinion that they charge whatever price they chose, so long as we have this deduction made; let them charge so much for the coal and make the allowance for the wood. It's their business to get as much as they can, and of course it's our business to get it as cheap as we can, but we want to know what we are buying and for how much coal we are paying.

Q. This standard under which you are buying—there was a standard here before that?

A. There was two and have been for twenty years.

Q. But when a man purchased he would not complain about it?

49 A. I knew that when I was buying from the Pittsburg Company I was compelled to pay for wood, and when I bought from the other concern I was, by proper gauging, paying for coal.

Q. It might have been an improper one, but still there was a standard before this law went into operation?

A. There was a double standard, because I was buying both ways.

Q. Well, suppose there was a double standard, you knew when you bought by the New Orleans gauge and when you bought by the Louisville gauge?

A. Yes, sir; that's all right.

Q. Then it was well known that there was a standard by which coal was bought before this law was passed?

A. Well, if you can call a thing a standard which was not there by law—it was simply a custom established by parties from time immemorial. I think that is the most dignified appellation that you can give it.

Q. Now, before this law went into operation, coal was either sold by the New Orleans measurement or by the Louisville measurement?

A. Yes, sir.

Q. That was something that you could understand as well as the men who gauged the boat?

A. Yes, sir.

Q. Now, if they are compelled under the law to sell as therein indicated, they will have to raise the price; they cannot let

50 things remain in the same condition as they were before?

A. They have it within their power to charge just whatever they choose. We have no control over that. What we are advocating is the establishment of a legal standard, just the same as there is with every other article. For instance, with sugar: If

I sell a man a barrel of sugar, and if he does not get the 220 pounds, he goes for me at once. We want the same thing with coal.

By Judge ROGERS: In order to get at this question of standard, I understand you perfectly well, but, in relation to this standard, how many bushels to a barrel?

A. Two and four-sevenths (2⅔) bushels to a barrel, or a certain number of cubic inches—2,628 cubic inches.

Q. Now, two and four-sevenths to a barrel?

A. Yes, sir.

Q. So, therefore, when you say so many barrels of coal, you estimate two and four-sevenths bushels in each barrel?

A. Yes, sir.

Q. That was one proposition; but when you get your boat you find included in that boat of coal and those number of bushels gunnels, check posts, pump boxes, etc., etc.?

A. Yes, sir.

Q. So that actually you did not get the two and four-sevenths bushels of coal to a barrel?

A. That's it. When we investigated the matter we found
51 that none of the gentlemen in the coal business knew anything about a section in the revised statutes which prescribes the measurement of a coal barrel. I never knew anything about it.

Q. Another feature: You found that these gaugers who gauged these boats according to the New Orleans system were appointed by the sellers of the coal?

A. Yes, sir.

Q. And that you had no control over them at all?

A. No, sir.

Q. Not responsible to any governmental functions at all?

A. No, sir. I would state, though, that we never had any complaint against them, though. I signed, in fact, an application for these same gentlemen.

Q. But still you found that these gaugers were appointed by the sellers of the coal?

A. Yes, sir.

Q. And they were removable at any time?

A. Yes, sir; I understood even that some of the parties brought their own gaugers down here last season. Perfectly new people to the country; I was told that; I don't know so of my own knowledge.

Q. You understood that some of the parties brought down gaugers, and that those gentlemen did not do the whole business at all, and at any rate they were not sworn officers?

A. No, sir; they were not.

By Mr. DENEGRE:

52 Q. Is it not a fact that under the old system of gauging there was generally an overrun of 200 or 300 barrels of coal to the boat?

A. As I stated, there was about twenty barrels or so. I think that the last boats that I had it was nineteen or nineteen and a half, and another was about six and a half barrels short. Now, we weighed the coal at the landing and took it down to the refinery, and we took careful weights there, and I found that the bulk of them were just a little above or a little below the amount.

Q. You only took the weight after it was carted through the street?

A. Yes, sir.

Q. Well, there is some loss in the handling, is there not?

A. Yes, sir; a slight loss in that.

Q. Did the thing about average up?

A. Averaged up in what?

Q. Every time that there was an overrun or underrun.

A. Well, I said in the first part of my statement that sometimes it was a little over and sometimes it was a little under; it was about just as close as you could make it.

Q. So that you were not paying for wood?

A. Oh, well, that's another branch of the subject. According to their standard, it held out, but it would bear no relation to the Louisville standard or the present law.

53 Q. But I say that under the New Orleans standard, by which it was ordered, you got the number of barrels that you paid for?

A. Well, you can say fairly so. A little over or a little under.

By Judge Rogers:

Q. In other words, these gentlemen controlling the New Orleans market honestly carried out their system of selling you two and four-sevenths bushels to a barrel, gauging it with timber and coal together?

A. Well, as far as the measurement was concerned, all right; but I had another grievance that I did not think very fair. For instance, I have been made to take coal, such as they wanted to give me, which was notoriously inferior in the market and I had to take it.

By Mr. Denegre:

Q. That's just the same thing that you do with the sugar trust?

A. No, sir; we give them what they want and they will take no other.

Q. I want to put it down again very clear that if they undertake to sell you a boat-load of coal and charge you for so many barrels of coal at the rate of, say, thirty cents per barrel that you get the number of barrels that you pay for?

A. I get the number of barrels according to their system. I make no complaint about it at all. I stated that I had entire confidence in the carrying out of their system.

Q. Then, the great thing about this law is that it establishes more for a barrel?

54 A. It establishes a system for actual tares, and in doing so it makes more to a barrel.

Q. Then the complaint was not about having a man who gives you an improper barrel or an improper gauge?

A. No, sir; no complaint on that at all.

Q. Have you not had occasion to employ Mr. Sweeny in the case in which you say that you had an overrun with the two boats that you bought of something like 2 or 300 barrels?

A. Mr. Sweeny made a report and it showed an increase. I don't know how it was; we never could get our figures to agree. There was a difference between the weighers; those were the first two boats, and the rest have fallen off some to 16 or 18 and 6½ or some other trifling amount, but in the main substantially correct.

By Mr. CAGE:

Q. Mr. Wallis, when you bought under the old system of measuring a barrel of coal, you understood that two and four-sevenths was a barrel?

A. Yes, sir.

Q. Now, in order to check up the correctness of the gauge, you found that if you were sold ten thousand barrels of coal at two and four-sevenths bushels to a barrel you found that you generally got that amount or a little over or a little under?

A. Well, I have never, as I have explained, got down to the tally of the bushels. You could never get any concurrence of opinion among them when you got down to small measures, and I
55 have therefore always treated the matter from the standpoint of a boat-load.

Q. What I am trying to get at is this: that you knew of their system of measurement in New Orleans, and that a barrel would come out two and four-sevenths of a bushel; that you knew what you were buying, and therefore you were not buying wood, as you previously claimed in your testimony here to-day.

A. Well, now you are subdividing this subject from the boat-load. It's the whole boat-load that we buy, and the object of this whole business is to get at the contents of that boat—how many barrels there are in the boat; we want to get at the proper contents of the boat.

By Mr. DENEGRE:

Q. They do not charge you a lump price for the boat; they charge you for the coal—so many barrels in that boat at so much a barrel?

A. Yes; but they find an improper number of barrels in it.

By Mr. CAGE:

Q. Does it amount to anything?

A. No, sir; it does not. You have got to take your gross product and then deduct substances which are not coal, and it takes a very fine calculation to figure out the problem that you are trying to get at.

Q. You know that you are going to get a certain amount of coal

for your money—you bought with your eyes wide open and paid so much money for so much coal?

56 A. Well, you may say I bought for twenty years bacon and was paying for twenty pounds to each and every package that I did not get. I could not help myself. If you ask me if I was robbed and I will most certainly say that I was.

By Mr. Den-gre:

Q. Why?

A. Because I was paying for bacon and getting wood and salt.

By Judge Rogers:

Q. How about wood for coal?

A. Same thing; there is only one way, and that is by having actual tares.

By Mr. Denegre:

Q. Under the old system there was two and four-sevenths bushels to a barrel?

A. Yes, sir.

Q. And when they sold you a boat-load they would sell you ten thousand barrels and charge you so much a barrel?

A. To go behind the boat-load you would have to commence your inquiry as to how many cubic inches in that barrel.

Q. You know how many cubic inches they are figuring upon?

A. Yes, sir.

Q. Then you know for what you are paying?

A. Yes, sir.

Q. And if they undertook to sell you a boat and rendered you a bill for ten thousand barrels of coal at 50 cents per barrel, did

57 it not pan out when you came to see it that there was ten thousand barrels of their standard coal?

A. Of course, according to their standard, but they apply the wrong devisers.

Q. But you knew what you were paying for?

A. Yes, sir; we had no complaint about that; because if we had we would have gone for the Pittsburg and Southern Coal Company.

By Judge Rogers:

Q. And this law is to prevent that?

A. Yes, sir.

Q. And you get gaugers who are responsible to somebody?

A. Yes, sir.

Q. Just like the flour inspectors that have been recommended to the governor for the last forty years, and these gentlemen here present have signed the recommendations for these parties—they have signed exactly the same way to appoint these same gaugers; we presume that, like in the Western produce business, they will work very well after while.

Q. In selling sugar there is an allowance for tare?
A. Yes, sir.
Q. Twenty pounds?
A. Yes, sir.
Q. You weigh barrels before you deduct?
A. Yes, sir; weigh everything, and there in special scales made by only one man in America.

By Mr. DENEGRE:

58 Q. But there is no law which makes you employ a man and pay him, whether you want to employ him or not?
A. No, sir, because our weights are never disputed. There is no necessity where everybody can do his own weighing; but how many people in the community can weigh their coal, and therefore the buyer has to have somebody to do this who knows what he is about.

By Mr. CAGE:

Q. Now if the Pittsburg and Southern Coal Company had agreed to adopt the Louisville gauge, would you not have been perfectly satisfied?
A. Yes; but with the New Orleans gauge, never! Any actual gauge I am always satisfied with.
Q. Then you would not have wanted any forced gauging?
A. No, sir; you will see in that report the correspondence where we offered them that. The only thing is that they all say it's a long distance off, and they want us to pay for the wood, notwithstanding that they acknowledge that it is all wrong. Mr. O'Neal acknowledges it in there, and I had no idea but what they would give in to it.
Q. So that no forced inspection you have placed no importance upon?
A. A non-compliance with our request forced us to go to the legislature and get the authority of the legislature to appoint these people. If it had been done voluntarily we would not have done so. I had to stick it to them with section 8, so as to force them to
59 do it. I told Mr. Schneidau in the commencement that we would have been glad to have himself act as inspector; we have confidence in these gentlemen.
By Judge ROGERS: You put your confidence in the governor to appoint and have them sworn and give bond?
A. Yes, sir.

(By agreement the signature of witnesses to testimony dispensed with.)

60 *Documents Offered in Evidence in Connection with Testimony of Jno. S. Wallis.*

Coal measurement.

Valuable and Interesting Report on the Subject to the Sugar Planters' Association.

(Extract from the minutes of that body, meeting of June 9, 1887.)

Messrs. John S. Wallis, chairman; Louis Bush, D. R. Calder, Leon Godchaux, and Adolph Meyer appointed by the Sugar Planters' Association for the purpose of considering the methods of gauging coal-boats, reported as follows:

That after a full and careful examination of such sugar planters, retail dealers, and other individuals as were willing to appear before them, they are unanimously in favor of the Louisville or actual tare system. Believing that there is no justification for making the buyer pay for the space occupied by pumps, boxes, check posts, timber, etc.

They find that the Louisville system is universally accepted in the West, and that all trades and settlements among Western miners and coal operators between themselves are made on this basis.

The Louisville system may be stated thus: Reduce the length, breadth, and depth of boats, inside measure, to inches, multiply together, and divide by 2688, thus showing the gross measurement in bushels.

The allowance for tare varies with the number of pump boxes, etc., in the boat, but the average tare, or allowance, may be stated thus: 3 per cent. on barges drawing 6 feet; 4, 5, 6 per cent. on boats drawing 7½ feet; 5 per cent. on boats drawing 7 feet.

So on an average boat drawing seven feet and containing 10,000 barrels, the tare would be 5 per cent., or 500 barrels.

The New Orleans system may be stated as follows: Multiply the length (deducting one foot for sheer) by breadth and depth, and divide the product by four, and the quotient will be the number of barrels claimed to be contained in a boat; no allowance being
61 made for tare in pump boxes, check posts, or other timber.

The gaugers here are appointed by the sellers and paid by them; they are not sworn public officers; and the buyer is not consulted when they are appointed, and they can be changed at will. That there may be no dispute as to these methods, we have in our possession certificates made in New Orleans last summer (1886) by O. A. Schneidau, New Orleans inspector, of a boat measured by Louisville system, in which reduction for timber, etc., is made, which exceeds four per cent., or about 372 barrels in a boat containing about 9,300 barrels. We have also a certificate of P. De Vergos, New Orleans inspector, February, 1887, which accords with the foregoing statement of New Orleans method. The records of the New Orleans Gas Company, as far back as 1879, show that a boat measured by Louisville gauge that year, 9,507 barrels, and that when regauged in New Orleans the gauge was 10,065 barrels, a gain of 558.

The coal records of the gas company are perhaps more complete than any other in this city, and their experienced officer, who has been in charge of this branch so many years, assures us that this same difference of gauge has existed from 1879 to the present time. The New Orleans gauge assumes that two and four-sevenths bushels of 2,688 cubic inches are contained in one barrel, or 6,912 cubic inches. By reference to the Revised Statutes of Louisiana, "Weights and Measures," sections 3942 to 3940, it will be seen (art. 3942): "That weights and measures are to be procured by the governor, like those of the United States, and deposited in the office of the secretary of state."

(Article 3925) "There shall be in this State a dry measure, to be known under the name of barrel, which shall contain 3⅞ bushels, according to American standard."

(Section 3926) "Coal shall be sold by the barrel or bushel measure."

The American standard is the Winchester bushel, which contains 2150.42 cubic inches; at 3⅞ bushels to a barrel, the barrel must contain 6,988 cubic inches. So the Louisiana barrel, as sold in this State, is really 76 cubic inches short measure. The barrel as prescribed by the statute being 6,988 cubic inches, should contain 2⅝ bushels, and not 2⅝ bushels as universally adopted here.

This is another improper and illegal measurement to be corrected, which foots up a loss of 1.1 per cent. to the buyer, or 110 barrels in a boat-load of 10,000 barrels. It must be realized that we are now quoting from the Revised Statutes, which can be enforced.

In conclusion, we beg to state that the exigencies of the times require that sugar planters, and all classes of consumers, should exact fair weights and measures. Our industries will not bear any longer the impositions of the past, will not bear buying, by fictitious measurement, will not admit that sellers should have one measure to buy by and another to sell by. All these losses in the end come out of the consumers, large or small.

62

On May 17, the committee, before making the report public, with the authorization of the executive committee, thought best to submit the same to the Pittsburg and Southern Coal Company, in the hope that this combination would adopt their recommendation without the necessity of public discussion, such litigation or legal steps as they may feel compelled to recommend if their just views are not acceded to.

On June 9, the committee reported that having waited the allotted time for the reply of the Pittsburg and Southern Coal Company, the chairman called on the agent, who stated that no reply had been received. All amicable efforts towards bringing about the just and much-needed change sought having failed, the committee recommend: That as a change is unavoidable, it is advisable to go back at once to the methods prevailing without exception on the Allegheny, Monongahela and Ohio rivers, and in a large portion of the Mississippi valley, etc., to gauge boats according to the Louisville system, and to buy all coal by the bushel.

The adoption of these recommendations would secure a uniform custom throughout the entire Ohio and Mississippi valleys, which is

much to be desired and would obviate all discussion as to how many bushels should be contained in a barrel, etc. Persons who are accustomed to buy by the barrel would only have to remember that the old rule was to give them 25 bushels to the barrel.

They further recommend that this association appoint a committee of five to supervise such legal and legislative steps as may be deemed necessary to carry out these recommendations, and also to enlist the co-operation of the assistant parish associations in the several parishes.

On motion of Mr. H. C. Minor, seconded by Mr. H. A. Lesassier, the report was unanimously adopted, and, on further motion, the committee were instructed to take necessary steps to secure legislative action in the matter.

(Extract from minutes of Louisiana Sugar Planters' Association, Meeting of Feb. 9, 1888.)

The President stated as the question of coal measurement had come up again, he would ask the re-reading of the report of the committee, made to this association last year, which being done, the following report from a committee of the Southern Coal Company was read:

PITTSBURG, *June* 9, 1887.

To the president and board of directors of Pittsburg and Southern Coal Company.

GENTLEMEN: The undersigned committee to whom the paper
63 of the Southern Sugar Planters' Association of the question of coal gauging was referred, beg leave to report as follows:

The question presented and discussed is the method of gauging coal to determine its quantity in the Southern markets.

This question is alike interesting to producers as well as consumers, and in its determination the equities of both must be considered.

In the Ohio river markets, as they have truthfully represented, the system of measuring the cubic inches of inner space in the vessel, and, after deducting for timbers and other space not occupied by coal, and reducing it to bushels by dividing by 2688 is, and has been in vogue for many years.

This is the system adopted for determining quantity where package is returned, although it is true, as has been represented, that some little coal is bought in these markets by this measurement for the Southern trade where the package is included, but a corresponding increase in price is made on said coal to pay for package.

However, the quantity is quite limited, as the bulk of the coal shipped to the Southern market is handled and loaded by Southern shippers almost exclusively.

In the Southern market the system of measurement is somewhat different, and properly so too.

In determining, all space is considered, whether occupied by coal or timber, as in this market the package goes with the coal, and it is just and equitable that sufficient increase should be allowed to

recompense the producer for the cost of the vessel. For long years past the old-established New Orleans method of gauging by the barrel when the package is included, has been in vogue in this section; and, although, at times dullness of trade and strong competition has induced some few operators, with the view of effecting trade, to make concession in price in the shape of a different gauge, and even settle on the Ohio river or Louisville gauge, as it is called, still the New Orleans or Vandine system is the standard method at that point, and has been in almost general use for years past, and in order to render justice to all concerned, and preserve harmony in the business, we recommend its continuance.

In considering the report of the committee referred to, we recognize the full weight of the apparently strong arguments presented by them, and appreciate their commendable effort in reducing the expense connected with their industry, but at the same time we realize the lamentable fact that our business has been at its lowest ebb for several years back, and, unfortunately for them, will not admit of further lopping, which, in short, the whole question resolves itself into; in fact, it is not simply a question of whether this is or is not a just system of measurement. The question is: "Is the present price of coal too high or too low?"

64 A certain quantity of coal is sold for a certain sum of money, and as the present price is at the minimum, we cannot see how it can be reduced. In other words, if a change was made in quantity, a corresponding change would have to be made in price. For instance, according to the present system 100 barrels of coal, at 30 cents per barrel, cost $30; suppose a change in measurement was inaugurated whereby the consumer received the same 100 barrels of coal and was only charged for 96 barrels, the price he would have to pay for the same would be 31¼ cents per barrel, costing him in the end the same amount, $30. This, although changing the method, would not effect the result. Therefore, we recommend a strict adherence to the present system of measurement.

Respectfully submitted,

W. W. O'NEILL,
J. N. BUNTON,
Committee.

In response to the above, Mr. Adam Thomson introduced the following resolutions:

Resolved, That the committee which has in hand the matter of the ganging coal in New Orleans be requested to again open negotiations with the sellers of Pittsburg coal for the adoption here of the Louisville system of ganging, in order that buyers may have actual gauges as the basis of purchase.

Resolved, further, That failing in this, they be requested to formulate adequate laws to enforce such a system, and to report the same back to this association.

The resolution was unanimously adopted.

(Extract from Minutes of Louisiana Sugar Planters' Association, meeting of April 12th, 1888.)

Reports of committees being in order, the committee on coal measurement, through its chairman, Mr. John S. Wallis, reported as follows:

NEW ORLEANS, *April* 12, 1888.

To Louisiana Sugar Planters' Association.

GENTLEMEN: Your committee called on the Pittsburg & Southern Coal Company, and presented them the following communication, viz: "The committee on coal measurement of the Louisiana Sugar Planters' Association, begs to reiterate the views expressed by them in the communication of June 10 last, as being for the adoption of the Louisville method of gauging in lieu of the present system. They beg that you reconsider the decision then arrived at, and adopt the actual gauge or measurement which has been established in most other articles by all commercial bodies in years past. This course will recommend your organization to consumers for fair dealing, and save the trouble attendant upon legislative action."

65 To which the following reply has been received:

PITTSBURG, *April* 5, 1888.

The communication of your committee, regarding coal gauge, duly to hand and will have attention.

(Signed) PITTSBURG AND SOUTHERN COAL COMPANY

As our legislature meets next month, your committee begs to be authorized to employ, at their discretion, an attorney to frame a suitable law, with the understanding that they will not incur the expense if it does not seem to them to be absolutely necessary. The law, when prepared, to be submitted to your body.

Very respectfully, JOHN S. WALLIS, *Chairman.*

Mr. Richard McCall said it seemed difficult to get justice, and the only way was to take care of ourselves. He moved to employ a lawyer to draw up an act to correct the evils complained of.

On motion of Gen. J. L. Brent, it was amended so as to include Judge Emile Rost on the committee, which will stand as follows, John S. Wallis, chairman, Leon Godchaux, Adolphe Meyer, D. R. Calder, Louis Bush, and Emile Rost, the committee being instructed to prepare an act themselves for presentation to the next legislature. Carried.

(Extract from minutes of Louisiana Sugar Planters' Association, meeting of May 10, 1888.)

Reports of committees being in order, the committee on coal measurement, through its chairman, Mr. John S. Wallis, reported that, after consultation, Senator Goldthwaite had been prevailed

upon to draw up a bill for presentation to the legislature, providing for the appointment of official gaugers. The bill, which thoroughly covers the case, was read *in extenso* by the chairman, who moved that it be published separately, and that it receive the approbation of the Sugar Planters' Association. The motion was unanimously carried.

Mr. Henry McCall moved that a vote of thanks be tendered to Mr. Wallis and the committee on coal measurement for their exertions in this matter. The motion was unanimously adopted.

The following is the text of the bill:

An act entitled An act for the appointment of two coal and coke boat gaugers, to fix their compensation, and to define their duties.

SECTION 1. Be it enacted by the General Assembly of the State of Louisiana, That there shall be appointed by the governor, by and with the consent of the senate, two coal and coke boat gaugers, who shall have their offices in the city of New Orleans; provided, however, that the governor shall have the power to remove from office any coal and coke boat or barge gauger upon satisfactory proof made to him of negligence or official misconduct.

SECTION 2. Each of said gaugers shall give bond, payable to the governor, or his successor in office, with two sufficient sureties, in the penal sum of five thousand dollars, conditioned for the faithful performance of the duties required of him by law.

SECTION 3. It shall be the duty of said gaugers, when called upon for that purpose, to gauge any coal or coke boat or barge in the port of New Orleans or the State of Louisiana.

SECTION 4. Such gauging shall consist in reducing the length, breadth and depth, inside measurement, of boats or barges, deducting all obstructions and displacements, into cubic inches and dividing said cubic inches by two thousand six hundred and eighty-eight (2688), thus ascertaining the net measurement in bushels. Two and six-tenths (2⅗) bushels shall constitute a barrel.

SECTION 5. In all cases it shall be the duty of the gaugers, or either of them, to respond promptly to any call made for their or either of their services, and to furnish a full and detailed certificate of gross measurement of the boat or barge gauged, and the allowance made for obstructions and displacements.

SECTION 6. The fee for gauging or regauging shall be ten dollars ($10) for each boat, and five dollars for each barge, to be paid by the seller, except as is hereinafter provided.

SECTION 7. The purchaser of any boat or barge of coal or coke shall have the privilege of calling upon the said gauger or gaugers to regauge boats or barges in all cases where the original gauge is not satisfactory, and such regauge shall be adopted as the correct measure. If the original gauge shall be found to be correct, then the purchaser shall pay the fee for regauging; but if the regauge shows a less measure, then the seller shall pay the fee.

SECTION 8. No boat-load of coal or coke shall be sold in this city or State until it has been inspected as provided for in this act. And

any person who shall sell a boat-load of coal or coke that has not been gauged as aforesaid, shall be liable to a penalty of fifty dollars ($50) for each boat or barge so sold, to be recovered, with costs of suit, in any court of competent jurisdiction, for the benefit of the Charity Hospital of New Orleans.

SECTION 9. The term of office of said gangers shall be four years. This act to take effect from and after its passage.

The act was approved, and the committee instructed to secure the indorsement of the sugar and produce exchanges and various other mercantile associations.

Filed Sept. 5, 1888, in connection with Mr. John S. Wallis' testimony.

JAS. KIRKPATRICK, *Clerk.*

67 *Notice of Judgment.*

First City Court of New Orleans.

NEW ORLEANS, *Dec.* 30, '88.

STATE OF LOUISIANA (for the Use of Charity Hospital) vs. PITTSBURG AND SOUTHERN COAL CO. } No. 14739.

To the State of Louisiana, through Walter H. Rogers, attorney general:

Take notice that judgment has been rendered herein rejecting plaintiff's demand with costs.

By order of—

H. H. PRICE,
Judge First City Court.
J. GREEN,
Deputy Clerk.

Service of Notice of Judgment.

Received, New Orleans, December 18, 1888, the within notice of judgment, and on the same day, month, and year served a true copy of the same on the plaintiff herein, the State of Louisiana, by serving it on the Hon. W. H. Rogers, attorney general of the State, in person.

W. H. WRIGHT,
Deputy Constable.

68 *Reasons for Judgment.*

First City Court of New Orleans.

STATE OF LOUISIANA (for the Use of the Charity Hospital) vs. THE PITTSBURG AND SOUTHERN COAL CO. } No. 14739.

The State of Louisiana, through the attorney general, brings this suit against the Pittsburg and Southern Coal Company, a corpora-

tion organized under the laws of the State of Pennsylvania, domiciled at Pittsburg, in that State, and doing business in the city of New Orleans through its agent, A. Schneidau, to recover a penalty for the violation of a statute of the State of Louisiana, in this: that the said Pittsburg and Southern Coal Company did, on the 30th day of August, 1888, sell one boat-load of coal to W. G. Coyle & Co., of this city, without having had the same gauged as required by the statute aforesaid, being act No. 147 of the year 1888, the said penalty being the eighth section of the statute.

The defendant, answering, denies all the allegations of plaintiff, except such as may be specially admitted. These admissions are:

That the boat of coal was sold by defendant, as alleged, to W. G. Coyle & Co. on the 30th day of August, 1888, without having been gauged by the coal-boat gaugers appointed under the said act.

69 That the said boat of coal was gauged by Mr. De Verges, a professional coal-boat gauger, and that the method employed by him was that provided and enjoined in section 4 of the act, and, further, that no application was made to the gaugers appointed under the act, and that the boat was never gauged by them. Liability for the penalty sought to be recovered is denied by the defendant on the grounds:

1. That the law has not been violated, because the employment of the State gaugers is not made compulsory by the statute, and that all the provisions thereof which a true, just, and correct interpretation make requisite have been complied with in the sale complained of.

2. That should it be held that the meaning an- intent of the act is to compel the employment of the State gaugers in the gauging of all boats and barges of coal sold in the State of Louisiana; that it is unconstitutional and void, because repugnant to the constitution of this State and the United States, in this, that it violated articles 1, 6, 29, and 46 of the constitution of the State of Louisiana and the first and second clauses of section 10 of article 1, the fifth amendment, section 1 of the fourteenth amendment, and the third clause of section 8 of article 1 of the Constitution of the United States.

The first portion of the defense necessitates an interpretation of the statute.

The title of the act is:

70 "An act for the appointment of two coal and coke boat gaugers; to fix their compensation, and to define their duties; and it provides:

"SECTION 1. That there shall be appointed by the governor, by and with the advice and consent of the senate, two coal and coke boat gaugers, who shall have their offices in the city of New Orleans; provided, however, that the governor shall have the power to remove from office any coal and coke boat or barge gauger, upon satisfactory proof made to him of negligence or official misconduct.

"SEC. 2. Each of said gaugers shall give bond, payable to the governor or his successor in office, with two sufficient sureties, in

the penal sum of five thousand dollars, conditioned for the faithful performance of the duties required of him by law.

"SEC. 3. It shall be the duty of said gaugers, when called upon for that purpose, to gauge any coal or coke boat or barge in the port of New Orleans or the State of Louisiana.

"SEC. 4. Such gauging shall consist in reducing the length, breadth and depth, inside measurement of boats or barges, deducting all obstructions and displacements, into cubic inches and dividing said cubic inches by twenty-six hundred and eighty-eight (2688), thus ascertaining the net measurement in bushels. Two and six-tenths (2 6/10) bushels shall constitute a barrel.

"SEC. 5. In all cases it shall be the duty of the gaugers, or either of them, to respond promptly to any call made for their, or
71 either of their services, and to furnish a full and detailed certificate of gross measurement of the boat or barge gauged, and the allowance made for obstructions or displacements.

"SEC. 6. The fee for gauging or regauging shall be ten dollars for each boat, and five dollars for each barge, to be paid by the seller, except as hereinafter provided.

"SEC. 7. The purchaser of any boat or barge of coal or coke, shall have the privilege of calling upon the said gauger or gaugers to regauge their boats or barges, in all cases where the original gauge is not satisfactory, and such regauge shall be adopted as the correct measure. If the original gauge shall be found to be correct then the purchaser shall pay the fee for regauging; but if the regauge shows a less measure, then the seller shall pay the fee.

"SEC. 8. No boat-load of coal or coke shall be sold in this city, or State, until it has been inspected, as provided for in this act. And any person who shall sell a boat-load of coal or coke that has not been gauged as aforesaid, shall be liable to a penalty of fifty dollars for each boat or barge so sold, to be recovered, with costs of suit, in any court of competent jurisdiction, for the benefit of the Charity Hospital of New Orleans.

"SEC. 9. The term of office of said gaugers shall be four years. This act to take effect from and after its passage."

Under this act is the employment of the State gaugers compulsory?

72 It will be seen that in section 3 it is not made the State gaugers' — to gauge all coal or coke boats or barges in the city of New Orleans or the State of Louisiana, but only so to do when called on for that purpose.

In section 5 the duty of the gaugers again begins only when a call is made for their or either of their services.

In section 7 their duty begins after a sale has been made, when the purchaser, who does not find the gauge under which he has purchased a boat or barge of coal satisfactory, avails himself of the privilege granted to call upon them to regauge the boat or barge.

These are the only sections of the act which provide for the rendition of any services by the State gaugers, and there is certainly nothing in them that would indicate that their employment is com-

pulsory; but, on the contrary, that they were simply at the call of dealers in coal or coke to render such services as might be desired by sellers to make original gauges, and by those who have purchased and find the gauging of others unsatisfactory to regauge.

I think the privilege granted by this section is the right given to the purchaser who is dissatisfied to have the correctness of the gauging done by others tested by the gauge of the officers appointed by the law; but it is claimed by the State that section 8 makes their employment compulsory.

This section forbids the sale of any boat-load of coal or coke
73 until "it has been inspected, as provided for by this act; and any person who shall sell a boat-load of coal or coke that has not been gauged as aforesaid shall be liable to a penalty," etc. Does "gauged as aforesaid" mean gauged by the State gaugers or does it mean simply, as section 4 provides: "Such gauging shall consist in reducing the length, breadth, and depth," etc., to ascertain the net measurement of a boat or barge of coal?

Is the employment of the State gaugers to be made compulsory by such an interpretation of section 8, when in all the sections of the act which treat of their duties their employment is made voluntary, and when an interpretation which makes compulsory only the manner and method of gauging, as provided in section 4, leaves the sections defining the duties of the gaugers to mean what words import? Again, do not sections 6 and 7 clearly indicate that the gauging contemplated by the act may be done by others as well as by the State gaugers?

Section 6 provides the fee for either gauging or regauging—that is, whether they make the original gauge or regauge what others have gauged—and the fee is to be paid by the seller for gauging or regauging, except as is hereinafter provided—that is, in section 7, which provides that "if the original gauge shall be found to be correct, then the purchaser shall pay the fee for regauging; but if the regauge shows a less measure, then the seller shall pay the fee."

Can it be contended that the original gauge mentioned in this section has been made by the State gaugers? Under such an interpretation they would, although they had made an erroneous
74 original gauge, be twice paid—once for the original erroneous gauge and again for regauging.

If such had been the intent in framing section 7, would not the provision have been that in case the original gauge shall be found to be correct, then the purchaser shall pay the fee for regauging; but, if the regauge shows a less measure, then no additional fee shall be paid.

As to the construction of statutes, it is a well-settled rule that where any cause of doubt arises, although the doubt apparently attaches only to a particular clause, the whole statute is to be taken together, and to be examined, to arrive at the legislative intent.

In construing any part of a law, the whole must be considered—the different parts reflect light on each other—and, if possible, such a construction is to be made as will avoid any contradiction or inconsistency, and it is the duty of the court, as far as practicable, so

to reconcile the different provisions as to make the whole act consistent and harmonious.

By all the rules of interpretation the various sections of the statute under consideration must be so construed as to make them harmonious, and each section mean what it says, giving full import to each provision. Under such a construction I must conclude that section 8 of the act must be considered in connection with sections 3, 5, 6, and 7, and, when so considered, that it does not make the employment of the State gaugers compulsory, but
75 that the act is compulsory only in so far as the manner and method of gauging is concerned provided for in section 4.

This interpretation of the act is further sustained when we resort to what the code says is the universal and most effectual way of discovering its true meaning, and that is by considering the reason and spirit of it or the cause which induced the legislature to enact it.

The evidence in this case introduced by the State shows that the enactment of this law was brought about by an association known as the "Sugar Planters' Association" of this State, the members of which are large consumers of coal; that this association, through a committee, had the act under consideration drafted and pressed its passage upon the General Assembly. Previous to its passage what was known as the New Orleans gauge was used in the measurement of coal upon the Mississippi river this side of Memphis.

This method of gauging allowed no actual tare, whereas the method used above Memphis, known as the Louisville gauge, did. This was the cause of complaint—simply the method of measurement and the manner of arriving at the contents of a boat of coal.

In the language of Mr. John S. Wallis, a witness for the State, a member of the committee, and who testified that he aided in framing the bill, "the object, in a very few words, of the committee was to establish a system of actual tares in connection with coal in the city of New Orleans, as it is here with every other article of
76 commerce." The same witness, in reference to the gaugers engaged in the business of gauging coal-boats in the city of New Orleans, testified: "I would state that we never had any complaint against them." What was wanted by the association was the enactment of a law that would establish a system of measuring or gauging boats of coal, and that want was the cause which, through the application of the "Sugar Planters' Association," induced the legislature to enact act 17 of 1888.

As I think the statute must be interpreted, no coal or coke can be sold in the State of Louisiana until it has been gauged in accordance with section 4 of the act, which provides for the deduction of actual tares.

Sellers of coal, if they wish, may apply or call upon the State gaugers to do the gauging, or, if they prefer, upon any other gauger; but should any purchaser of a boat-load of coal be dissatisfied with the gauging done by another than a State gauger he is given the right to call upon the State gaugers to regauge the boat, and the certificate of the State gaugers is made by the act that which shall be deemed the correct one and by which the parties shall abide.

Can the interests of all parties be better protected than they are by this construction of the act, and does it not fully meet the want of the "Sugar Planters' Association," which was the cause for the enactment of the law?

77 In the case at bar the evidence shows that the defendant complied with section 1 of the act: that the boat was regauged as required thereby, and the only complaint of the State is that the State gaugers were not employed.

The purchaser, Coyle, had the right, if dissatisfied with the certificate of the gauger, De Verges, to call upon the State gaugers to regauge the boat, and had he done so the certificate of the State gaugers would have been conclusive; and had their certificate shown less coal in the boat than the certificate of De Verges, then the defendant would have had to pay the fee for regauging.

But the purchaser was satisfied with the gauging of De Verges and made no call upon the State gaugers for a regauge.

In my opinion, the defendant has not violated the act and is not subject to the penalty prescribed in section 8.

Having arrived at this conclusion, it is unnecessary to examine or pass upon the other defenses made herein as to the constitutionality of the act.

It is therefore ordered, adjudged, and decreed that there be judgment in favor of The Pittsburg and Southern Coal Company, defendant, and against The State of Louisiana, plaintiff herein, rejecting the demand of plaintiff, with costs.

H. H. PRICE, *Judge.*

A true copy.

JAMES KIRKPATRICK,
Clerk First City Court of New Orleans.

78 *Motion and Order of Appeal for State. Filed Dec.* 13, 1888.

STATE OF LOUISIANA,
FIRST CITY COURT OF ORLEANS,
NEW ORLEANS, *Dec.* 13, 1888.

The State of Louisiana now moves for an appeal in the case No. 14739—

State of Louisiana, for the use, etc., *vs.* Pittsburg and Southern Coal Company, without bond.

Let a suspensive appeal be granted the State of Louisiana, for the use of the Charity Hospital, without bond, returnable to the supreme court of Louisiana on the first Monday of January, 1889.

H. H. PRICE, *Judge.*

December 13, 1888.

Intervention of Melancon and Sweeney. Petition, Affidavit, and Order for Appeal.

E. O. Melancon and Thos. F. Sweeney depose and say—

That they have been duly appointed, commissioned, and qualified as coal gaugers under the provisions of act No. 147 of 1888;
79 that the fees of said office amount *two* over two thousand dollars for each; that they have an interest beyond two thousand dollars in said judgment, and are aggrieved by a certain judgment herein rendered in The State of Louisiana, for the use, etc., *vs.* The Pittsburg and Southern Coal Company, No. 14739 of the docket of this court, wherein it is claimed that the said act is unconstitutional.

They desire, as third persons interested in said judgment, to appeal suspensively from said judgment to the supreme court of this State, and pray said appeal be granted to said court, returnable the first Monday in January, 1889, on their furnishing bond in the sum of one hundred and fifty dollars.

E. O. MELANCON.
THOS. F. SWEENEY.

Sworn to and subscribed before me this — day of December, 1888.

BENJAMIN ORY,
Notary Public.

Bond of Appeal. Filed Dec 30, 1888

THE STATE OF LOUISIANA, }
Parish of Orleans, City of New Orleans. }

Know all men by these presents that we, E. O. Melancon
80 and Thos. F. Sweeney, and Jas. Sweeney, as surety, are held and firmly bound unto the Pittsburg and Southern Coal Company, the Board of Administrators of the Charity Hospital, and the State of Louisiana, executors, administrators, and assigns, in the sum of one hundred and fifty dollars, and for the payment whereof we bind ourselves, our heirs and administrators, firmly by these presents.

Subscribed and dated this 13th day of Dec., 1888.

Whereas the above-bounden E. O. Melancon and Thos. F. Sweeney have this day appealed from a final judgment rendered by H. H. Price, judge first city court of New Orleans, against the State of Louisiana, for use of the Charity Hospital, in favor of the Pittsburg and Southern Coal Company, dismissing plaintiff's suit with costs:

Now, therefore, the condition of the above obligation is such that if the said E. O. Melancon and Thos. F. Sweeney shall prosecute this said appeal with effect and shall pay and perform any judgment that shall be rendered thereon against them, or if the execution that may issue on such judgment should be satisfied out of their proper goods and chattels, lands and tenements, then and in

such case the obligation to be void, or else remain in full force and virtue.

(Signed) E. O. MELANCON.
THOS. F. SWEENEY.
J. SWEENEY.

Signed and delivered in presence of—
(Signed) W. H. ROGERS.

81 Let a suspensive appeal be granted in this case, returnable to the supreme court for the State of Louisiana on the first Monday of January, 1889.

New Orleans, Dec. 13, 1888.

(Signed) H. H. PRICE.
Judge First City Court.

A true copy.

JAMES KIRKPATRICK.
Clerk First City Court of New Orleans.

(*Citation of Appeal.*)

THE STATE OF LOUISIANA:

First City Court of New Orleans.

STATE OF LOUISIANA (for the Use of the Charity Hospital)
vs.
THE PITTSBURG AND SOUTHERN COAL CO.; O. A. Schneidau, Agent. } No. 14739.

To Pittsburg and Southern Coal Co.; O. A. Schneidau, agent, Greeting:

Whereas E. O. Melancon and Thos. F. Sweeney have ap-
82 pealed from a final judgment rendered in the above suit, which appeal is returnable in the supreme court of Louisiana on the first Monday of January, 1889—

You are hereby commanded to appear then and there to answer said appeal.

Witness the Honorable H. H. Price, judge of said court.

New Orleans, this 13th day of December, 1888.

H. H. PRICE, *Judge.*

Return to Citation of Appeal.

Received, New Orleans, December 18, 1888, the within citation of appeal; and on the same day, month, and year served a true copy of the same on the Southern and Pittsburg Coal Company; O. A. Schneidau, agent, made defendants herein, by serving it in the hands of O. A. Schneidau, agent, in person.

W. H. WRIGHT,
Deputy Constable.

(Citation of Appeal.)

THE STATE OF LOUISIANA:

First City Court of New Orleans.

STATE OF LOUISIANA (for the Use of Charity Hospital),
vs.
PITTSBURG AND SOUTHERN COAL CO.; O. A. Schneidau, Agent. } No. 14739

To Pittsburg and Southern Coal Co.; O. A. Schneidau, agent,
83 Greeting:

Whereas State of Louisiana, for use of Charity Hospital, has appealed from a final judgment rendered in the above suit, which appeal is returnable in the supreme court of Louisiana on the first Monday of January, 1889—

You are hereby commanded to appear then and there to answer said appeal.

Witness the Honorable H. H. Price, judge of said court.

New Orleans, this 13th day of December, 1888.

H. H. PRICE, *Judge.*

Return to Citation.

Received, New Orleans, December 13, 1888, the within citation of appeal, and on the same day, month, and year served a true copy of the same on the Pittsburg and Southern Coal Company; O. A. Schneidau, agent, made defendant herein, by leaving it in the hands of O. A. Schneidau, agent, in person.

W. H. WRIGHT,
Deputy Constable.

I hereby certify the foregoing to be a true and correct transcript of the docket of this court in the above entitled and numbered
84 cause, embracing all the proceedings had, and that attached hereto are all the papers on file, except the appeal bond, a copy of which is herewith transmitted.

W. H. PRICE,
Judge First City Court of New Orleans.

85 UNITED STATES OF AMERICA, }
State of Louisiana, }

Proceedings Had in the Supreme Court of the State of Louisiana.

STATE OF LOUISIANA, for Use of Charity Hospital,
versus
PITTSBURG & SOUTHERN COAL CO.; O. A. Schneidau, Ag't. } No. 10275.

Transcript of appeal. Filed January 7th, 1889.

Continuance.

Extract from the Minutes of March 22nd, 1889.

The court was duly opened pursuant to adjournment.

86 Present: Their honors, Edward Bermudez, chief justice; Felix P. Poché, Charles E. Fenner, Lynn B. Watkins, Samuel D. McEnery, associate justices.

STATE OF LOUISIANA, for Use of Charity Hospital,
versus
PITTSBURG & SOUTHERN COAL CO.: O. A. Schneidau, Ag't. } No. 10275.

This case, not having been reached, was continued by preference.

Cause Submitted.

Extract from the Minutes of April 24th, 1889.

The court was duly opened pursuant to adjournment.

87 Present: Their honors, Edward Bermudez, chief justice; Felix P. Poché, Charles E. Fenner, Lynn B. Watkins, Samuel D. McEnery, associate justices.

STATE OF LOUISIANA, for Use of Charity Hospital,
versus
PITTSBURG & SOUTHERN COAL CO.: O. A. Schneidau, Ag't. } No. 10275.

This case was called for trial and, after hearing argument of Walter H. Rogers, Esq., for plaintiff and appellant, and George Denégre, Esq., for defendant and appellee, the same was submitted on briefs.

Reasons for Judgment.

Supreme Court of Louisiana.

CLERK'S OFFICE, *Filed*, NEW ORLEANS, *May* 13, 1889.

STATE OF LOUISIANA, for Use of Charity Hospital,
versus
PITTSBURG & SOUTHERN COAL CO.: O. A. Schneidau, Ag't. } No. 10275.

88 Appeal from the first city court of New Orleans.

Mr. Justice Poché delivered the opinion and decree of the court in the words and figures following, to wit:

This is a proceeding to enforce a penalty for the alleged violation of act 147 of 1888, entitled "An act for the appointment of two coal and coke boat gaugers, to fix their compensation, and to define their duties."

The charge is that the defendant corporation sold a boat of coal which had not been gauged as required by the statute, and the penalty is claimed under the 8th section of the act, which reads as follows: "No boat-load of coal or coke shall be sold in this city or State until it has been inspected as provided for in this act, and any person who shall sell a boat-load of coal or coke that has not been gauged as aforesaid shall be liable to a penalty of fifty dollars ($50.00) for each boat or barge so sold, to be recovered, with costs of

suit, in any court of competent jurisdiction, for the benefit of the Charity Hospital of New Orleans."

The defense is substantially:

89 1°. A denial that the law has been violated, followed by an averment that the boat-load of coal had been gauged in accordance with the provisions of the statute, to the satisfaction of the purchaser, by a competent gauger employed by the seller, and that the employment of the State gaugers is not made compulsory by the statute.

2°. That, if the act can be construed as meaning that the employment of the State gaugers is compulsory, the legislation is violative of articles 1, 6, 29, and 46 of the constitution of the State of Louisiana and of the first and second clauses of section 10 of article 1 of the fifth amendment, of section 1 of the fourteenth amendment, and of the third clause of section 8 of article 1 of the Constitution of the United States.

The judgment below was in favor of the defendant, and the State appeals.

The suggestion of appellee's counsel that the case is not within our jurisdiction is not well founded.

The main resistance to the act is that "it lays an impost or duty on goods not the product of the State of Louisiana but of a sister State which is not necessary for the execution of any inspection law," and that as such it violates quite an array of articles

90 of the constitutions of the State of Louisiana and of the United States.

The case therefore presents an issue involving the constitutionality or legality of an impost, within the meaning of article 81 of the constitution, which provides that in such cases the jurisdiction of this court attaches as well to the facts as to the law.

The authorities quoted on this point by appellee's counsel are decisions of cases originating under the constitution of 1868, which differed in this particular from the present constitution, and they are all answered by the decision of this court in the case of the Corporation of Minden *vs.* Silverstein & *al.*, 36 An., 912. In that case the court found the law in favor of the corporation as affecting the legality of the tax, and decided the facts in favor of the defendants. In taking jurisdiction of the facts the court said: "The feature of the cause which grants to this court jurisdiction over the legal question involved also vests it with jurisdiction over the facts. That element of jurisdiction which was left in some doubt by the constitution of 1868 has been materially elucidated by the provision

91 on this subject in the present constitution," which reads:

"In such cases the appeal on the law and the fact shall be directly from the court in which the case originated to the supreme court."

Hence it follows that we have and that we must exercise jurisdiction over this case in both branches of the defense.

The judgment of the city court is predicated on the conclusion that the employment of the State gaugers is not compulsory under the statute, and that therefore the law was not violated by the de-

fendant corporation in having the coal measured by its own gauger, who had followed the requirements of the act as to the mode of measurement.

Our examination of the case has led us to a different conclusion. The act is very inartistically worded, and appears to have been very carelessly and loosely drawn; hence it is not surprising to note the multifarious constructions to which it has already been subjected.

It consists of nine sections, which are substantially as follows:

1°. The first section provides for the mode of appoint-
92 ment of the two gaugers, and directs that their offices shall be kept in the city of New Orleans.

2°. The second section regulates their bonds.

3°. The third section makes it their duty, when called upon for that purpose, to gauge any coal or coke boat or barge in the port of New Orleans or the State of Louisiana.

4°. The fourth section regulates the mode of gauging and decides what a bushel shall consist of in measurement.

5°. The fifth section makes it the duty of the gaugers or either to respond promptly to any call made for their or either of their services, and prescribes the style of certificates which they must furnish.

6°. The sixth section fixes the fees for gauging and regauging, and requires the seller to pay the same.

7°. The seventh section reads: "The purchaser of any boat or barge of coal or coke shall have the privilege of calling upon the said gauger or gaugers to regauge boats or barges in all cases when the original gauge is not satisfactory, and such regauge shall
93 be adopted as the correct measure. If the original gauge shall be found to be correct, then the purchaser shall pay the fee for regauging; but if the regauge shows a less measure, then the seller shall pay the fee."

8°. The eighth section contains the penal clause of the act, and has been transcribed in the first part of this opinion.

9°. The ninth section fixes the term of office of the gaugers at four years, and provides that the act shall take effect from and after its passage.

From our construction of the act it appears that its true intent and purpose is to secure a uniform measurement of all boats or barges of coal or coke which are sold in this State, and to require that said measurement is to be made by two State officers to be appointed for that purpose, whose certificates shall be proof that the required measurement has been made, as well as of the quantity of coal or coke contained in each boat or barge, and whose fees for such services are to be paid by the seller, except in cases of regauging when the measure is found correct, in which cases the fees shall be paid by the purchaser.

94 Hence it is clear to our minds that the sale in the State of any boat-load of coal or barge which has not been inspected and measured by the State gaugers is unlawful, and subjects the seller to the payment of a fine or penalty of $50.00 for each boat or barge so sold.

The provisions of section 3, which are held up as justifying the contention that the gauging by the State gaugers is optional with the seller, mean, according to our construction, that the State gaugers shall be compelled to measure boats of coal not only in the port of New Orleans, where their offices are situated, but that the measurement must be made, if required, in any other part of the State, and section 5 requires that they must proceed to any point to which they are called for the purpose of gauging coal-boats without unnecessary delay.

The requirements of these two sections may compel them to proceed, for the purpose of measuring coal-boats, to any point in this State on the Mississippi river from the Arkansas line to the Gulf, or to any point on any water-course in the State on which a boat of coal can be floated.

95 But we are very clear in the conviction that neither these two sections nor any other provisions of the act can be reasonably construed as meaning that it is optional to dealers in coal in boats or barges to call or not, as they choose, on the State gaugers to measure their boats before selling them.

Such a construction would absolutely and effectually defeat the primary object of the act, as hereinabove indicated, and such a conclusion would obstruct, instead of executing, the legislative will solemnly expressed.

We therefore conclude and we hold that the employment of the State gaugers for the purpose of measuring every boat or barge of coal or coke sold in this State is compulsory, and that the defendant in this case is liable for the penalty inflicted for the infraction of the law, unless it be violative either of the State constitution or of that of the United States.

We do not understand that on appeal the defendant's counsel lay any stress on the application of articles 1, 6, and 29 of our constitution to the discussion of their case; but if they do, a sufficient

96 answer is that the two articles first enumerated have no earthly connection with the subject, and that article 29, which requires that every law shall embrace but one object and that shall be expressed in the title, is not violated by the statute under discussion.

The contention seems to be that the act embraces several objects. In thus arguing counsel simply and unconsciously confound the object of a law with the means of carrying out that object.

The object of the law is the appointment of two coal and coke boat gaugers, which indicates the purpose or intention of having coal and coke gauged. Fixing the compensation of the gaugers and defining their duties are the means of carrying out the object of the law.

It is next contended that the act violates the paragraph of article 1 which prohibits the General Assembly from passing any local or special law "regulating labor, trade, manufacturing, or agriculture." But the law is neither local or special and is intended to take effect throughout the State on the subject-matter of its provisions.

97 Whenever the legislature proposes to create the inspectors of calico, thread, or shoes, which counsel seem so seriously to dread, their case will doubtless receive proper judicial attention.

It is conceded in argument that there would be no complaint if the gauging fees were not exacted of the sellers of coal, and therefore this seems to be the local attack which it is desired to resist.

We therefore hold that the statute is not hostile to any provisions of the State constitution.

The grounds of nullity charged against the statute as violative of the Constitution of the United States which are pressed on appeal are that it is a regulation of commerce and as such antagonistic to paragraph 3 of section 8, article 1, of the Constitution, which vests the Congress of the United States with the exclusive power "to regulate commerce with foreign nations and among the several States and with the Indian tribes," and in the next place that it purports to lay an impost or duty on coal not produced in Louisiana but in a sister State, which is not necessary for the execution of an inspection law, in violation of paragraph 2, section 10, of article 1

98 of the Federal Constitution, which forbids any State "without the consent of Congress to lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws."

The argument made on these two points is practically answered by the consideration which flows from the very text of the statute, that it is clearly an inspection law and that the State derives no profit or revenue from its enforcement, as the charges enacted for its execution enure exclusively to the gaugers or inspectors as their fees for the services rendered in the inspection.

It is not contended that those fees are excessive or unreasonable; on the contrary, it is in proof that the identical fee, $10.00, for inspecting or measuring a coal-boat is the compensation allowed by the defendant to the gauger employed by itself for that very purpose.

The law is not a regulation of commerce in any sense of the word; it requires no condition on any one for the right of bringing coal for sale in Louisiana, either from a sister State or from a

99 foreign country, and much less does it seek or tend to prohibit the introduction of that commodity into the State from any other part of the world. The inhabitants of other States and of foreign countries may bring any quantity of coal for sale on our markets, and no power in the State can prevent it; all that the statute under discussion purports to do or aims to accomplish is to protect buyers and consumers of coal sold in boats and barges against fraud in weights and measures, and it appears from the record to our entire satisfaction that the necessity for such an inspection was urgent.

It is in proof that the coal thus sold was bought in Pennsylvania under one standard of measurement and that it was sold in Louisiana under a different standard, and that the practical result was that what was sold here for 100 barrels of coal under the New Orleans standard of measurement was in truth and represented

but 96 barrels at Pittsburg and other coal-shipping points in Pennsylvania; hence it is patent that the object of the law embraced a protection which the State owed to its citizens, and that the purpose could not be reached through any other channel but by
100 responsible officers of the State, directly amenable to the laws of the land.

It is error to suppose that a law regulating the manner of measuring or weighing a commodity on the market is not an inspection law. It is well settled in jurisprudence that quantity is as legitimate a subject of inspection as quality.

And the right of enacting inspection laws by the States has never been questioned. "They form a portion of that immense mass of legislation which embraces everything within the territory of a State not surrendered to a general government, all which can be most advantageously exercised by the States themselves." Gibbons *vs.* Ogden, 9 Wheaton, 203.

The views which are herein announced, both as to the nature and scope of the statute and as to the power of the State to enact and to enforce similar legislation, find sanction in numerous adjudications by many courts of the country dealing with laws of the same import which had been assailed on constitutional grounds substantially similar to those which have been invoked in the present discussion.

101 Our own reports furnish three cases presenting kindred issues in which the same views prevailed: State *vs.* Fosdick, 21 An., 256; State *vs.* Pleasants, 23 An., 349; Clark *vs.* Board of Health, 30 An., 1351.

The first two of these cases involved the alleged unconstitutionality of hay inspection and weighing laws, and the other presented a similar resistance to a coal-oil inspection and measuring law.

In each of those cases it was decided that the law was not a regulation of commerce or an impost on imports. As far back as the year 1823 the highest court of South Carolina disposed of a contestation involving the alleged unconstitutionality of an ordinance of the city of Charleston requiring the measurement of coals by an inspector. It was there held that the ordinance was not a regulation of commerce, although the coal sought to be measured had been imported from a foreign land.

We quote from that learned opinion the following passage on account of its peculiar bearing on one of the points now under discussion:

"If any articles imported can be inspected, I cannot undertake to decide that coals ought not. Quantity as well as quality
102 is an object of inspection, and it may contribute as much to the convenience of the citizens of this place, where coals are used very generally for fuel, to have an inspection of them as of beef or pork or bread or any other article." McCord's Reports, 2 vol., p. 495, Council *vs.* Rogers. See also Stokes *vs.* New York, 14 Wendell, 77; Yates *vs.* Milwaukee, 12 Wisconsin, 673.

In the leading case of Turner *vs.* Maryland, 107 United States Reports, p. 38, the question of State inspection laws, as affected by

the Constitution of the United States, received an exhaustive review in an elaborate opinion containing very useful information on the subject.

In that case the noted Maryland tobacco laws were decided to be constitutional. It was then held:

"The charge for outage, under the proviso of said section 11 as so amended and re-enacted, is an inspection duty within the meaning of the constitution."

"Dispensing with an opening for inspection of the hogshead mentioned in said proviso does not, in view of the other provisions of the tobacco-inspection statutes of Maryland, deprive those
103 statutes of the character of inspection laws."

In that case the court said: "Recognized elements of inspection laws have always been quality of the article, form, capacity, dimensions, and weight of package. * * * It has never been regarded as necessary, and it is manifestly not necessary, that all of these elements should co-exist in order to make a valid inspection law."

All the foregoing considerations in this opinion are predicated on the theory that the coal which is the primeval subject of this contestation is imported within the meaning of the Constitution; but such is not the case; it is in proof that it all comes from the State of Pennsylvania.

Now, the Supreme Court of the United States has decided that "the term impost as used in that clause of the Constitution which says that no "State shall levy any imposts or duties on imports or exports" does not refer to articles imported from another State, but only to articles imported from foreign countries into the United States." Woodruff *vs.* Parham, 8 Wallace, 123.

104 It is quite clear that this view of the case is of itself fatal to defendant's contention on the question of imposts.

A thorough examination of the questions discussed has led us to the conclusion that the State had the clear constitutional power to enact the statute in contestation and hence it must be enforced.

It is therefore ordered that the judgment appealed from be annulled, avoided, and reversed; and it is now ordered and decreed that the defendant be condemned to pay to the State of Louisiana, for the benefit of the Charity Hospital of New Orleans, the sum of fifty dollars, with costs in both courts.

Judgment and Decree.

Extract from the Minutes of May 13th, 1889.

The court was duly opened pursuant to adjournment.

Present their honors, Edward Bermudez, chief justice; Felix P. Poché, Charles E. Fenner, Lynn B. Watkins, Samuel D. McEnery, associate justices.

STATE OF LOUISIANA, for Use of Charity Hospital,
versus
PITTSBURG & SOUTHERN COAL CO.; O. A. Schneidau, Ag't. } No. 10275.

Mr. Justice Poché pronounced the judgment and decree of the court in the words and figures following, to wit:

It is ordered and decreed that the judgment appealed from be annulled and reversed; and it is now ordered and decreed that the defendant be condemned to pay to the State of Louisiana, for the benefit of the Charity Hospital of New Orleans, the sum of fifty dollars, with costs in both courts.

Petition for Rehearing. Filed May 20th, 1889.

Supreme Court.

STATE OF LOUISIANA, for Use of the Charity Hospital,
vs.
PITTSBURG & SOUTHERN COAL CO. } No. 10275.

106 The petition of defendant herein with respect represents—

That it is desirous of obtaining a rehearing herein upon the following grounds, namely:

1st. That the decision of the court that the act of Louisiana in question is valid and binding is contrary to the Constitution and laws of the United States stated herein and passed upon by the court adversely to the rights of defendant.

2nd. That it makes compulsory the act of Louisiana, which by its terms is simply directory, at the instance of the parties in interest.

Wherefore your petitioner prays a rehearing be granted herein.

(Signed) W. S. BENEDICT, *Mcy.*

Reasons for Refusing Rehearing. Filed May 27th, 1889.

STATE OF LOUISIANA, for Use of Charity Hospital.
versus
PITTSBURG & SOUTHERN COAL CO.; O. A. Schneidau, Ag't. } No. 10275.

107 Mr. Justice Fenner pronounced the opinion and decree of the court on application for rehearing in the words and figures following, to wit:

Nothing in this application shakes our conviction of the correctness of our interpretation of the statute as making the gauging of coal boats and barges before sale compulsory. We may remark, however, that the act applies exclusively — sales of boat-loads or barge-loads of coal and not to sales of a particular number of barrels of coal from a boat or barge; therefore the suggestion of counsel of the hardship of having to pay $10 for the privilege of selling 10 barrels of coal from a boat is irrelevant and without foundation.

The case of Turner *vs.* Maryland, 107 U. S., 38, is conclusive on the Federal questions involved, except in one respect, viz., in that case the inspection applied to tobacco grown in Maryland alone, and the court concluded its opinion by saying: "We must not be understood as expressing any opinion as to any provisions of the Mary-

land laws which refer to the inspection of tobacco grown out of Maryland." This and other clauses of the opinion reserve
108 the question as to whether State inspection laws of the character involved in that and in the present case not essential to the immediate health or safety of the inhabitants can be applied to articles brought from one State into another for sale.

Admitting there may be doubt on this question, we deem it safest to maintain the constitutionality of State law or the other authorities quoted by us, there being no decision of the Supreme Court of the U. S. to the contrary.

Rehearing refused.

Rehearing Refused.

Extract from the Minutes of May 27th, 1889.

The court was duly opened pursuant to adjournment.

Present: Their honors, Felix P. Poché, presiding justice; Charles E. Fenner, Lynn B. Watkins, Samuel D. McEnery, associate justices.

Absent: His honor, Edward Bermudez, chief justice.

109 Mr. Justice Fenner pronounced the opinion and decree of the court on application for rehearing in the following case:

STATE OF LOUISIANA, for Use of Charity Hospital,
versus
PITTSBURG & SOUTHERN COAL CO.: O. A. Schneidau, Ag't. } No. 10275.

Rehearing refused.

Petition for Writ of Error. Filed May 29th, 1889.

Supreme Court.

STATE OF LOUISIANA, for Use of the Charity Hospital,
versus
PITTSBURG & SOUTHERN COAL COMPANY. } No. 10275.

To the Hon. E. Bermudez, chief justice of the supreme court of the State of Louisiana:

110 The petition of the Pittsburg & Southern Coal Company, a corporation created and existing under and by virtue of the laws of the State of West Virginia and a citizen of said State, herein appearing by and through Joseph Walton, its president, with respect represents—

That there is error to its prejudice in the final decree rendered at the present term; that it is aggrieved thereby and is desirous of obtaining a writ of error therefrom, in due accord with law, to the honorable the Supreme Court of the United States, returnable at its next term, upon the questions of constitutional law set up in the pleadings herein and passed upon adversely to the rights claimed thereunder by your petitioner.

Wherefore it prays an order be granted herein for a writ of error, returnable to the honorable the Supreme Court of the United States,

at its next term, to be held at the city of Washington, in the month of October, 1889; that citation in error be ordered to be issued in due accord with law; that the amount of bond be fixed by this honorable court, and for such other orders as may be requisite or proper in the premises.

111 And it will ever pray, etc.

(Signed) W. S. BENEDICT,
BAYNE, DENÉGRE & BAYNE, *Att'ys.*

Order Granting Writ of Error.

Writ allowed on bond for three hundred dollars, returnable according to law.

New Orleans, May 30th, 1889.

(Signed) E. BERMUDEZ,
Chief Justice.

Writ of Error.

Copy of writ of error lodged and filed in the clerk's office of the supreme court of Louisiana.

Copy in pursuance of the statute in such cases made and provided this 29th day of May, one thousand eight hundred and eighty-nine.

Supreme Court.

STATE OF LOUISIANA
versus } No. 10275.
PITTSBURG & SOUTHERN COAL CO.

112 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said cause, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit, between The State of Louisiana, for the use of the Charity Hospital of New Orleans, and The Pittsburg & Southern Coal Company, a corporation of the State of Pennsylvania, whereof Joseph Walson is president, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States and the decision was in favor of such

113 their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Pittsburg and Southern Coal Company, as by its com-

plaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

114 Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 30th day of May, in the year of our Lord one thousand eight hundred and eighty-nine.

[SEAL.] (Signed) E. R. HUNT,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by—
(Signed) E. BERMUDEZ,
Chief Justice of the Supreme Court of the State of Louisiana.

Bond for Writ of Error. Filed May 29th, 1889.

Supreme Court of Louisiana.

STATE OF LOUISIANA, for the Use of, &c., *vs.* PITTSBURG & SOUTHERN COAL COMPANY. } No. 10275.

115 Know all men by these presents that we, The Pittsburg & Southern Coal Company of Pennsylvania, as principal, O. A. Schneidau, as surety, are held and firmly bound unto the State of Louisiana & Charity Hospital of New Orleans, La., in the full and just sum of five hundred dollars, to be paid to the said State of Louisiana, for the use of said Charity Hospital of New Orleans, La., certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, jointly and severally, by the presents.

Sealed with our seals and dated this 30 day of May, in the year of our Lord one thousand eight hundred and eighty-nine.

Whereas lately, at a term of the supreme court of the State of Louisiana, holding session in the city of New Orleans, in a suit depending in said supreme court, wherein State of Louisiana & being for the use of the Charity Hospital of New Orleans, plaintiff, and The Pittsburg & Southern Coal Company of Penn., defendant, judgment was rendered against said Pittsburg & Southern Coal Company, defendant, and the said Pittsburg & Southern Coal
116 Company having obtained a writ of error and filed a copy thereof in the clerk's office of the said supreme court to reverse the judgment in the aforesaid suit, and a citation directed to

the said State of Louisiana, citing and admonishing said State to be and appear at the Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said Pittsburg & Southern Coal Company shall prosecute its writ to effect and answer all damages and cost if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in the presence of—

(Signed) PITTSBURG & SOUTHERN COAL CO., [L. S.]
O. A. SCHNEIDAU, *Agt.* [L. S.]
O. A. SCHNEIDAU. [L. S.]

Approved:

E. BERMUDEZ,
Chief Justice of the Supreme Court of the State of Louisiana.

117 *Affidavit Attached to Bond.*

UNITED STATES OF AMERICA, }
State of Louisiana, } ss:

Personally appeared O. A. Schneidau, who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides in the city of New Orleans and is worth the full sum of five hundred dollars over and above all his debts and liabilities and property exempt from execution.

(Signed) O. A. SCHNEIDAU.

Subscribed and sworn before me this 30 day of May, 1889.

[SEAL.] JOSEPH E. POCHÉ,
Clerk Supreme Ct of La.

118 *Clerk's Certificate.*

UNITED STATES OF AMERICA, }
State of Louisiana, }

Supreme Court of the State of Louisiana.

I, Joseph E. Poche, clerk of the supreme court of the State of Louisiana, holding sessions at the city of New Orleans, do hereby certify that the foregoing 117 pages contain a full, true, and complete copy of the transcript of the proceedings had in the first city court for the parish of Orleans in a certain suit wherein The State of Louisiana, for the use of the Charity Hospital, was plaintiff and The Pittsburg and Southern Coal Company, O. A. Schneidau, agent, were defendants, and also of all the proceedings had in this supreme court on the appeal taken by said State of Louisiana, for the use of the Charity Hospital, which appeal is now on the files of this honorable court under No. 10275.

119 In testimony whereof I have hereunto set my hand and affixed the seal of this honorable court, at the city of New Orleans, this twenty-second day of July, anno Domini 1889,

and in the one hundred and thirteenth year of the Independence of the United States of America.

[Seal Supreme Court of the State of Louisiana.]

JOSEPH F. POCHÉ, *Clerk.*

120 *Certificate Legalizing Signature of the Clerk.*

U. S. OF AMERICA:

Supreme Court of the State of Louisiana.

I, Felix P. Poche, presiding justice of the supreme court of the State of Louisiana, do hereby certify that the chief justice of this court is now absent from this State and that Joseph F. Poche is clerk of the supreme court of the State of Louisiana; that the signature of Joseph F. Poche to the within certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof I have hereunto set my hand and seal, at the city of New Orleans, this twenty-second day of July, A. D. 1889, and in the one hundred and thirteenth year of the Independence of the U. S. of America.

Seal Supreme Court of the State of Louisiana.

F. P. POCHÉ,
Associate Justice, Presiding.

121 UNITED STATES OF AMERICA:

The President of the United States to the State of Louisiana, through its attorney general, Walter H. Rogers, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, wherein The Pittsburg & Southern Coal Company of Pittsburg, Pa., is plaintiff in error and The State of Louisiana is defendant in error, to show cause, if any there be, why the judgment rendered against the said Pittsburg & Southern Coal Company, plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 30 day of May, in the year of our Lord one thousand eight hundred and eighty-nine.

Seal Supreme Court of the State of Louisiana.

E. BERMUDEZ,
Chief Justice of the Supreme Court of the State of Louisiana.

122 [Endorsed:] (*f*) Supreme court Louisiana. No. 10275. State of Louisiana *vs.* Pittsburg & Southern Coal Company. Citation.

Marshal's Return.

Received Jun- 10, 1889, by the U. S. marshal, and on the 10th day of June, 1889, I served a true duplicate of the within original citation in error on The State of Louisiana, defendant in error in said original writ of error, through Walter H. Rogers, attorney general of the State of Louisiana, in the city of New Orleans, Louisiana, by handing the said duplicate to him in person & leaving the same in his hands.

Returned June 10, '89.

J. B. DONNALLY,
U. S. Marshal, East'n Dist. of La.
By J. B. DONNALLY, Jr.,
Dy U. S. Marshal.

J. B. Donnally, Jr., being duly sworn, deposes and says that he is a lawful deputy United States marshal for the eastern district of Louisiana, and that the foregoing service was made by him in the manner set forth in the above return.

J. B. DONNALLY, Jr.

Sworn & subscribed to before me this 10th day of June, 1889.
J. F. POCHE, *Clerk.*

[Seal U. S. Commissioner, District of Louisiana.]

J. L. SNOW, *U. S. Com'r.*

123 UNITED STATES OF AMERICA, *ss.*:

The President of the United States of America to the honorable the judges of the supreme court of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said cause, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit, between The State of Louisiana, for the use of the Charity Hospital of New Orleans, and The Pittsburg & Southern Coal Company, a corporation of the State of Pennsylvania, whereof Joseph Walton is president, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States and the decision was in favor of such their validity, or wherein was drawn in question the construc-
124 tion of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Pittsburg & Southern Coal Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the

parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 30th day of May, in the year of our Lord one thousand eighth hundred and eighty-nine.

Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.

E. R. HUNT,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by—
E. BERMUDEZ,
Chief Justice of the Supreme Court of the State of Louisiana.

125 [Endorsed:] (c.) No. 10275. State of Louisiana *versus* Pittsburg & Southern Coal Co. Writ of error. Supreme court of Louisiana. Filed May 29, 1889. Joseph F. Poché, clerk.

Endorsed on cover: Case No. 13,744. Louisiana supreme court. No. 159. The Pittsburg & Southern Coal Company, plaintiff in error, *vs.* The State of Louisiana, for the use of the Charity Hospital of New Orleans. Filed October 12, 1889.

Office Supreme Court U. S.
FILED.
SEP 29 1892
JAMES H. McKENNEY.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

No. ~~150~~ 10

THE PITTSBURG AND SOUTHERN COAL COMPANY,
Plaintiff in Error,

v.

THE STATE OF LOUISIANA, for the use of the Charity Hospital of New Orleans.

BRIEF FOR PLAINTIFF IN ERROR.

CHARLES W. HORNOR,
W. S. BENEDICT,
GEORGE A. KING,
Attorneys for Plaintiff in Error.

PRESS OF H. L. McQUEEN, WASHINGTON.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

THE PITTSBURG AND SOUTHERN COAL COMPANY, Plaintiff in Error, v. THE STATE OF LOUISIANA, for the use of the Charity Hospital of New Orleans.	No. 159.

BRIEF FOR PLAINTIFF IN ERROR.

1. Statement of the Case.

The State of Louisiana brought suit for the use of the Charity Hospital of New Orleans in the First City Court of New Orleans August 30, 1888, against the Pittsburg and Southern Coal Company, a corporation of the State of Pennsylvania, for a penalty of fifty dollars, for selling to W. G. Coyle & Co., of New Orleans, one boat of coal that had not been gauged as required by law.

The statute under which the penalty was claimed is entitled, "An act for the appointment of two coal and coke boat gaugers, to fix their compensation, and to define their duties," and will be found in the record, pp. 21, 22.

Section 1 provides for the appointment by the Governor of two coal and coke boat gaugers who shall have their offices in the city of New Orleans.

Section 2 fixes their bond.

Section 3 provides that:

"It shall be the duty of said gaugers, when called upon for that purpose, to gauge any coal or coke boat or barge in the port of New Orleans or the State of Louisiana."

Section 4 fixes the standard of measurement.

Section 5 requires the gaugers to respond promptly to any call made for their or either of their services, and to furnish a full and detailed certificate, etc.

Section 6 fixes the fee for gauging or regauging at ten dollars for each boat, and five dollars for each barge, to be paid by the seller.

Section 7 provides for regauging at the request of the purchaser where the original gauge is not satisfactory, the purchaser to pay the fee for regauging if the original gauge shall be found correct, but if the regauge show a less measure, then the seller is to pay the fee.

Section 8 provides as follows:

"No boat-load of coal or coke shall be sold in this city or State until it has been inspected as provided for in this act. And any person who shall sell a boat-load of coal or coke that has not been gauged as aforesaid, shall be liable to a penalty of fifty dollars ($50) for each boat or barge so sold, to be recovered, with costs of suit, in any court of competent jurisdiction, for the benefit of the Charity Hospital of New Orleans."

Section 9 fixes the term of office, etc.

The defendant appeared and answered, making the following allegations, pp. 3, 4:

"That it is a corporation organized under the laws of the State of Pennsylvania and domiciled in the city of Pittsburg, in the said State, and a citizen thereof; that its business is that of coal-mining, buying and selling

coal and coke; that the said coal and coke are the products of the said State of Pennsylvania, and are by respondents loaded in boats and barges on the Ohio and Mississippi Rivers and navigated down to the South on the said rivers and sold to purchasers along the banks of the said rivers and their various southern tributaries; that it every year sends down the Mississippi river, a navigable river of the United States, a number of barges and boats with cargoes of coal, and moors the same in the said river, retaining the same, as the property of your respondents, in the vessels in which it is brought down the said river to the city of New Orleans and other points, and holds the same until they are sold to its customers, which is the object with which the said boats and barges are loaded and navigated from the said State of Pennsylvania to the State of Louisiana and other States, said vessels always remaining on the navigable waters of the United States and sold thereon.

"Now your respondents aver that the demand herein made is by virtue of act No. 147 of the acts of 1888 of the State of Louisiana, and the respondents aver that the said coal boat No. 1098, for which a penalty of fifty dollars ($50) is herein claimed for selling, had been gauged by gaugers employed by respondents, and said boat, at said time of sale, was upon the Mississippi River, a navigable stream of the United States, within the jurisdiction of the United States, and the measurement thereof so made by said gaugers had been in accordance with section 4 of the said act; and that the said firm of W. G. Coyle & Co., to whom the said boat of coal and coke had been sold, were satisfied with the said measurements, desired no further measurement thereof, no certificate of the amount of coal therein, nor did respondents desire any further measurement; that the price was agreed on between your respondents and the said W. G. Coyle & Co., and any further gauging of the said boat and coal was totally unnecessary, uncalled for, and would have been productive of no good or benefit to anybody whatsoever.

"Respondent further avers that the said coal boat No. 1098 was laden with a cargo of coal which was mined in

Pennsylvania, and was by your respondents navigated down the Ohio and Mississippi Rivers to a point or place thereon within the boundaries of the State of Louisiana, for the purpose of selling the said vessel and cargo upon the said river in pursuance of the trade or commerce which is carried on by your respondent upon said river and within the body of the various States through which it flows between Pennsylvania and the Gulf of Mexico."

The defendant therefore claimed that the act under which the penalty was claimed was null and void upon nine grounds. The first four of them were based upon the repugnancy of the act to certain provisions of the Constitution of the State. These grounds being immaterial to the consideration of the case here, we omit. The others were as follows:

"5. That it is in violation of Article I of Section 10 of paragraph 1 of the Constitution of the United States 'in that it impairs the obligation of a contract' in this, that respondent has paid to the State of Louisiana the sum of two hundred and fifty dollars ($250) as a license for permission to carry on its business of selling coal and coke within the State of Louisiana; that the said two hundred and fifty dollars ($250) being accepted by the State of Louisiana and the city of New Orleans and a license issued to your respondent thereunder, the same constitutes a contract between your respondent and the State of Louisiana and the city of New Orleans who have also issued a license to your respondent in payment of the said sum, which gives to your respondent the right to sell coal and coke in the said city of New Orleans and State of Louisiana during the year 1888 without further opposition or hindrance or imposition of any charge or claim or impost on the part of the State of Louisiana or city of New Orleans; that the said license was so obtained and granted by the said State of Louisiana and the city of New Orleans prior to the passage of this act No. 147 of the regular session of 1888.

6. That it violates Article 1, Section 10, paragraph 2 of the Constitution of the United States, "in that it seeks to lay an impost or duty on imports in the State of Louisiana from the State of Pennsylvania, which said duty is not necessary for the execution of any inspection law.

"7. That it is in violation of the Fifth Amendment to the said Constitution of the United States.

"8. That it is in violation of Section 1 of the Fourteenth Amendment of the said Constitution of the United States.

"9. That it is in violation of paragraph 3, Section 8, of Article 1 of the Constitution of the United States, in that it is a regulation of commerce among the several States, in that it seeks to regulate upon the Mississippi River the sale of the vessels and coal of respondent, which are the subjects of commerce and trade carried on by your respondent on said river between the State of Pennsylvania and other States of the Union and foreign countries.

"Respondent avers that the said act is repugnant to the Constitution of the United States and the laws thereof, in that it is a discrimination against imports brought into the State of Louisiana in boats upon the navigable waters of the United States in favor of those who brought it in by land to the said State; in that it subjects the one to the payment of duties, imposts and exactions set forth in the said act which are not imposed upon those brought in by land.

"Respondent avers that the said act discriminates against coal and coke producers of the State of Pennsylvania in favor of the coal and coke producer of the State of Alabama, and it is also repugnant to the provisions of the Constitution and laws of the United States in numerous other particulars which will be shown on the trial of this cause.

"That the said act is unjust, tyrannical, oppressive, and an unwarranted interference with the right of citizens freely to contract and carry on trade and commerce, and contrary to individual liberties."

Testimony was taken; that for the defendant will be

found pp. 6–22; that for the plaintiff pp. 22–38. It was admitted, p. 6, that the coal boat was the property of the defendant; that it was sold to W. G. Coyle & Co. on the 30th of August, 1888; that it was gauged by a professional coal-boat gauger, but not one of the two appointed by the State under the statute, and that the method employed by him was that described in the statute of 1888; and that no application was made to State gaugers appointed under that act, and the boat was never gauged by them.

O. A. Schneidau, agent of the Pittsburg and Southern Coal Co., testified that the domicil of that corporation was at Pittsburg, Pennsylvania. That its business consists in selling coal in the Southern markets, and that the business is carried on by wholesale in boats and barges on the river, the barges containing about 400 to 450 tons, and the boats from 900 to 950 tons. The boats are loaded with Pittsburg coal on the Ohio and Mississippi Rivers, and on arrival in Louisiana are sold to dealers, planters, and other purchasers, but in no quantity less than a boat or barge load. They are gauged by a regular gauger employed by the company. The boat, for selling the load of which the penalty was claimed, came from Pittsburg, and was the property of the Pittsburg and Southern Coal Co. It was sold to W. G. Coyle & Co. of New Orleans, and was gauged by a gauger employed by the company, and by the system adopted by the new State law. Coyle & Co. made no objection to the gauge of the boat, required no certificate from the State officers, and no such certificate would have been of any benefit or advantage to either party to the transaction. There is some competition in the trade in coal from Alabama. There is no coal produced in the State of Louisiana. That from Alabama comes by rail, and very small quan-

tities also come from Tennessee. Mr. Schneidau had taken out a license as a wholesale coal dealer for the State of Louisiana for the year 1888.

A large number of other questions were asked of and answered by this witness, but as they appear to us to be wholly immaterial to the issue now presented, we simply refer the court to the deposition itself in full, pp. 6–15.

W. G. Coyle, a member of the firm of W. G. Coyle & Co., the purchasers of the coal in question, testified that on the 30th of August, 1888, he purchased this boat-load of coal from the Pittsburg and Southern Coal Company, and that it was measured by the measurement required by the new State law. He made no objection to the measurement and did not require that it should be gauged by the State gaugers.

R. Deverges testified, p. 17, that he is a coal gauger, and gauged the coal for the Pittsburg and Southern Coal Company, or the firms constituting that corporation. That he gauged the boat in question and gave a certificate for the same. That though appointed by and working for the company or its members, he was recommended by the coal merchants of New Orleans, and his appointment was the result of an understanding between the purchasers and the sellers of the coal. His fees for gauging were generally paid by the shippers of the coal. Immediately upon the passage of the act of 1888, he and the other gaugers were told to gauge the coal according to the standard required by the new law.

John S. Wallis was the only witness on behalf of the plaintiff, p. 22. His testimony was mainly as to the necessity for the passage of the act of 1888, and the difference between the old system of measuring coal and the new. It appears that there had been considerable correspondence and controversy between the Sugar

Planters' Association of Louisiana and others largely interested in the purchase of coal in that State, on the one hand, and the Pittsburg and Southern Coal Company on the other, as to the proper mode of measuring coal in boats. It was claimed by the Louisiana purchasers that in the Ohio River markets the system prevailed of measuring the cubic inches of inner space in the vessel, and after deducting for timbers and other space not occupied by coal, reducing it to bushels by the proper computation. In the Southern markets, however, all space was considered, whether occupied by coal or timber, as in that market the rule was that the package went with the coal, and it was but just and equitable in the opinion of the coal dealers of Pennsylvania that sufficient increase should be allowed to recompense the owners for the cost of the vessel. The consumers of coal in Louisiana claimed that the New Orleans gauge, as the mode of measurement there in vogue was termed, was inequitable and unjust in that the measurement included not only coal, but posts, timbers, and other parts of the boat, while the method in vogue in the North, called the Louisville gauge, allowed "tare," as it is called, that is, in the language of the Louisiana statute, for "all obstructions and displacements." A committee of the Pittsburg and Southern Coal Company, to whom the question was referred, admitted that the difference between the two systems existed as claimed, but insisted (p. 34) that inasmuch as in the Southern market the package goes with the coal, "it is just and equitable that sufficient increase should be allowed to recompense the producer for the cost of the vessel." They also argued, p. 35:

"A certain quantity of coal is sold for a certain sum of money, and as the present price is at the minimum, we can not see how it can be reduced. In other words, if a

change was made in quantity, a corresponding change would have to be made in price. For instance, according to the present system 100 barrels of coal, at 30 cents per barrel, cost $30; suppose a change in measurement was inaugurated whereby the consumer received the same 100 barrels of coal and was only charged for 96 barrels, the price he would have to pay for the same would be 31¼ cents per barrel, costing him in the end the same amount, $30. This, although changing the method, would not affect the result. Therefore, we recommend a strict adherence to the present system of measurement."

In response to this the Louisiana Sugar Planters' Association adopted these resolutions (p. 35):

"*Resolved*, That the committee which has in hand the matter of the gauging coal in New Orleans be requested to again open negotiations with the sellers of Pittsburg coal for the adoption here of the Louisville system of gauging, in order that buyers may have actual gauges as the basis of purchase."

"*Resolved, further*, That failing in this, they be requested to formulate adequate laws to enforce such a system, and to report the same back to this association."

A bill was thereupon prepared for presentation to the Legislature, and the draft of it, pp. 37, 38, will be seen to be identical with the law as eventually adopted, and under which this prosecution is instituted, pp. 21, 22.

The trial court rendered judgment December 10, 1888, rejecting the demand of the State, p. 38. Its opinion, pp. 38–43, proceeds upon the ground that the employment of the State gaugers is not compulsory; that in the case at bar the boat was gauged by the very standard required by the Louisiana statute; that the measurement was satisfactory to both the vendor and the purchaser; and that the only complaint of the State being that the State

gaugers had not been employed, the defendant had not violated the act.

From this judgment the State, p. 43, and the two official gaugers, p. 44, appealed to the Supreme Court of the State.

On appeal the Supreme Court reversed the judgment May 13, 1889, and condemned the defendant to pay to the State for the benefit of the Charity Hospital of New Orleans the penalty of fifty dollars imposed by section 8 of the statute in question, p. 54. Its opinion, pp. 47–53, proceeds upon the ground that the gauging by the State inspectors is compulsory, and that the statute attacked is not in conflict with the constitution either of the State or of the United States.

To reverse that judgment the present writ of error is prosecuted.

2. *Assignment of Errors.*

Plaintiff in error hereby assigns the following errors in the rulings and judgment of the Supreme Court of Louisiana:

1. That said court erred in sustaining the statute of Louisiana entitled "An act for the appointment of two coal and coke boat gaugers, to fix their compensation, and to define their duties," because the same is in conflict with Article 1, Sec. 8, par. 3 of the Constitution of the United States, wherein it is provided that the Congress shall have power "to regulate commerce with foreign nations and among the several States and with the Indian tribes."

2. That said court erred in sustaining said statute of Louisiana, because the same is in conflict with Article 1, Sec. 10, par. 2 of the Constitution of the United States, which provides as follows:

"No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress."

3. That said court erred in sustaining said statute of Louisiana because the same is in conflict with that portion of the act of Congress entitled "An act to enable the people of the Territory of Orleans to form a constitution and State government, and for the admission of said State into the Union on an equal footing with the original States, and for other purposes," approved February 20, 1811, section 3 of which provides:

"That the river Mississippi and the navigable rivers and waters leading into the same or into the gulf of Mexico, shall be common highways and forever free, as well to the inhabitants of the said State as to other citizens of the United States, without any tax, duty, impost or toll therefor, imposed by the said State." 2 Stat. 642.

4. That said court erred in sustaining said statute of Louisiana because the same is in conflict with that portion of the act of Congress entitled "An act for the admission of the State of Louisiana into the Union, and to extend the laws of the United States to the said State," approved April 8, 1812, sec. 1, which provides:

"That it shall be taken as a condition upon which the said State is incorporated in the Union, that the river Mississippi and the navigable rivers and waters leading into the same, and into the Gulf of Mexico, shall be common highways, and forever free, as well to the inhabitants of the said State as to the inhabitants of other States and the Territories of the United States, without any

tax, duty, impost, or toll therefor, imposed by the said State; and that the above condition and also all other the conditions and terms contained in the third section of the act, the title whereof is hereinbefore recited, shall be considered, deemed and taken, fundamental conditions and terms, upon which the said State is incorporated in the Union." 2 Stat. 703.

3. Brief of Argument.

Although the statute of Louisiana under which the penalty of fifty dollars is imposed lays a burden upon property brought in from other States, and although resisted on the ground, p. 48, that "it lays an impost and duty on goods not the product of the State of Louisiana, but of a sister State, which is not necessary for the execution of any inspection law," the Supreme Court of the State sustained it on the ground that it was a valid inspection law within the definition given by this court in the leading case of *Turner* v. *Maryland*, 107 U. S. 38. In that case this court sustained the tobacco-inspection laws of the State of Maryland, which required that before any hogshead of tobacco, should be taken out of the State it must be inspected, passed, and marked agreeably to the provisions of the act, and a charge of two dollars or more for every hogshead shall be paid as a fee to the inspector under a penalty of three hundred dollars for violation of the provisions of the act. It was said in regard to the object and effect of the inspection law in question, pp. 50, 51:

"The things required to be done in respect to the hogshead of tobacco in the present case, aside from any inspection of quality, are to be done to prepare and fit the hogshead, as a unit, containing the tobacco, for exportation, and for becoming an article of foreign commerce or commerce among the States, and are to be done before it

becomes such an article. They are properly parts of inspection laws, within the definition given by this court in *Gibbons* v. *Ogden*, 9 Wheat. 1. In a note to the argument of Mr. Emmet in that case, at page 119, are collected references to many statutes of the States, in the form of inspection laws, showing what features have been recognized as falling in the domain of those laws, such as the size of barrels or casks and the number of hoops on them; what pieces of beef or pork and what quantity and size of nails should be in one cask; the length, breadth and thickness of staves and heading, lumber, boards, shingles, etc.; and the branding of pot and pearl ashes, flour, fish and lumber, and the forfeiture of them if unbranded. These were cited as instances of the exercise by States of the power to act upon an article grown or produced in a State, before it became an article of foreign or domestic commerce, or of commerce among the States, to prepare it for such purpose. It was in reference to laws of this character that it was said, in argument, in *Gibbons* v. *Ogden*, that the enactments seemed arbitrary and were not founded on the idea that the things the exportation of which was thus prohibited or restrained were dangerous or noxious, but had for their object to improve foreign trade and raise the character and reputation of the articles in a foreign market. It was in reference to such laws, among other inspection laws, that Chief Justice Marshall, in *Gibbons* v. *Ogden*, p. 203, after remarking that a power to regulate commerce was not the source from which a right to pass inspection laws was derived, said: 'The object of inspection laws is to improve the quality of articles produced by the labor of a country; to fit them for exportation; or, it may be, for domestic use. They act upon the subject before it becomes an article of foreign commerce, or of commerce among the States, and prepare it for that purpose. They form a portion of that immense mass of legislation which embraces everything within the territory of a State, not surrendered to the general Government: all which can be most advantageously exercised by the States themselves.

"It was not suggested by the court that those particular

laws were not valid exercises of the power of the State to fit the articles for exportation, or that in addition to, or even aside from, ascertaining the quality of the article produced in a State, the State could not define the form of the lawful package or its weight, and subject form and weight, with or without quality, to the supervision of an inspector, to ascertain that the required conditions in respect to the article were observed."

The opinion concluded, however, pp. 58, 59:

"In this case no inspection is involved except that of tobacco grown in Maryland, and we must not be understood as expressing any opinion as to any provisions of the Maryland laws which refer to the inspection of tobacco grown out of Maryland."

Although this concluding sentence was brought to the notice of the Supreme Court of Louisiana, it said in response thereto, p. 55 of the Record:

"This and other clauses of the opinion reserve the question as to whether State inspection laws of the character involved in that and in the present case not essential to the immediate health or safety of the inhabitants can be applied to articles brought from one State into another for sale.

"Admitting there may be doubt on this question, we deem it safest to maintain the constitutionality of the State law on the other authorities quoted by us, there being no decision of the Supreme Court of the United States to the contrary."

The date of the decision of the Supreme Court of Louisiana, May 13, 1889, was, it will be observed, prior to any of the three latest decisions of this court on the subject of inspection laws, viz.: *Minnesota* v. *Barber*, 136 U. S. 313, decided May 19, 1890; *Brimmer* v. *Rebman*, 138 U. S. 78, decided January 19, 1891, and *Voight* v. *Wright*, 141 U. S. 62, decided May 25, 1891.

In *Minnesota* v. *Barber*, 136 U. S. 313, it was held that a statute of Minnesota was unconstitutional and void which required as a condition of sales in that State of fresh beef, mutton, lamb, or pork for human food, that the animals from which such meats are taken shall have been inspected in that State before being slaughtered. This was on the ground that the statute, while not in terms discriminating against meats brought from other States, yet by its necessary implication practically excludes from the Minnesota market all fresh beef, veal, mutton, lamb, or pork in whatever form, and although entirely sound, healthy and fit for human food, taken from animals slaughtered in other States, and that an inspection law can not be sustained if the inspection prescribed is of such a character, or is burdened with such conditions, as will prevent the introduction into the State of sound meats, the product of animals slaughtered in other States. It was held that a burden imposed upon interstate commerce was not to be sustained simply because the statute imposing it applies alike to the people of all the States, including the people of the State enacting it.

The same principles were applied in *Brimmer* v. *Rebman*, 138 U. S. 78, to a statute of Virginia somewhat different in form, though similar in effect. It required an inspection before sale by State inspectors of all fresh meat slaughtered more than one hundred miles from the place at which it is offered for sale. There was nothing in this statute of Virginia which in terms discriminated against the products of other States, and indeed it in no respect exempted meats slaughtered in the State from its operation. It would apply, for instance, to an offer of meat for sale in the city of Alexandria which had been slaughtered at Norfolk, which, although in the State, is far more than

100 miles distant. Yet, as its effect, if not its object, was to discriminate against the products of other, and more especially distant, States, it was held unconstitutional and void as not a valid inspection law, and as inconsistent with the exclusive power of Congress to regulate commerce among the States. The leading grounds for this conclusion were thus stated, pp. 82, 83:

"Whether there shall be inspection or not, and whether the seller shall compensate the inspector or not, is thus made to depend entirely upon the place where the animals from which the beef, veal, or mutton is taken, were slaughtered. Undoubtedly, a State may establish regulations for the protection of its people against the sale of unwholesome meats, provided such regulations do not conflict with the powers conferred by the Constitution upon Congress, or infringe rights granted or secured by that instrument. But it may not, under the guise of exerting its police powers, or of enacting inspection laws, make discriminations against the products and industries of some of the States in favor of the products and industries of its own or of other States. The owner of the meats here in question, although they were from animals slaughtered in Illinois, had the right, under the Constitution, to compete in the markets of Virginia upon terms of equality with the owners of like meats, from animals slaughtered in Virginia or elsewhere within one hundred miles from the place of sale. Any local regulation which, in terms or by its necessary operation, denies this equality in the markets of a State is, when applied to the people and products or industries of other States, a direct burden upon commerce among the States, and, therefore, void. *Welton* v. *Missouri*, 91 U. S. 275, 281; *Railroad Co.* v. *Husen*, 95 U. S. 465; *Minnesota* v. *Barber*, above cited. The fees exacted under the Virginia statute, for the inspection of beef, veal, and mutton, the product of animals slaughtered one hundred miles or more from the place of sale, are, in reality, a tax; and 'a discriminating tax imposed by a State, operating to the disadvantage of

the products of other States when introduced into the first-mentioned State, is, in effect, a regulation in restraint of commerce among the States, and, as such, is a usurpation of the powers conferred by the Constitution upon the Congress of the United States.' *Walling* v. *Michigan*, 116 U. S. 446, 455. Nor can this statute be brought into harmony with the Constitution by the circumstance that it purports to apply alike to the citizens of all the States, including Virginia; for, 'a burden imposed by a State upon interstate commerce is not to be sustained simply because the statute imposing it applies alike to the people of all the States, including the people of each State enacting such statute.' *Minnesota* v. *Barber*, above cited; *Robbins* v. *Shelby Taxing District*, 120 U. S. 489, 497. If the object of Virginia had been to obstruct the bringing into that State, for use as human food, of all beef, veal and mutton, however wholesome, from animals slaughtered in distant States, that object will be accomplished if the statute before us be enforced."

In *Voight* v. *Wright*, 141 U. S. 62, the flour-inspection laws of Virginia fell under the condemnation of this court for the same reason, viz.: that the inspection law discriminated against flour brought from out of the State. The object of inspection laws was thus discussed, pp. 64–66:

"The State of Virginia has had a system of inspection laws from an early period; but they have related to articles produced in the State, and the main purpose of the inspection required has been to prepare the articles for exportation, in order to preserve the credit of the exports of the State in foreign markets, as well as to certify their genuineness and purity for the benefit of purchasers generally. Chief Justice Marshall, in *Gibbons* v. *Ogden*, said: 'The object of inspection laws is to improve the quality of articles produced by the labor of a country; to fit them for exportation, or it may be, for domestic use.' 9 Wheat. 1, 203. In *Brown* v. *Maryland*, speaking of the

time when inspection is made, he adds: 'Inspection laws, so far as they act upon articles for exportation, are generally executed on land before the article is put on board the vessel; so far as they act upon importations, they are generally executed upon articles which are landed. The tax or duty of inspection, then, is a tax which is frequently, if not always, paid for service performed on land.' 12 Wheat. 419, 438. Whilst, from the remark of the Chief Justice, last cited, it would appear that inspection may be made of imported goods, as well as goods intended for export, yet in what manner and to what extent this may be done without coming in collision with the power of Congress to regulate foreign and interstate commerce, may be somewhat difficult to explain with precision. In the case of *People* v. *Compagnie Générale Transatlantique*, 107 U. S. 59, it was held by this court that a law of the State of New York imposing a tax upon alien passengers coming by vessel from a foreign country to the port of New York is a regulation of foreign commerce, and void, although it was declared by the title of the law to be 'An act to raise money for the execution of the inspection laws of the State'; which laws authorized passengers to be inspected in order to determine who were criminals, paupers, lunatics, orphans, or infirm persons, without means or capacity to support themselves, and subject to become a public charge. It is true that the law was held not to be an inspection law, because such laws have reference only to personal property, and not to persons. But the question is still open as to the mode and extent in which State inspection laws can constitutionally be applied to personal property imported from abroad, or from another State,—whether such laws can go beyond the identification and regulation of such things as are directly injurious to the health and lives of the people, and therefore not entitled to the protection of the commercial power of the Government, as explained and distinguished in the case of *Crutcher* v. *Kentucky*, *ante*, 47, just decided.

"It may be remarked, in passing, that in the notes to *Turner* v. *Maryland*, 107 U. S. 38, 51, 53, prepared by Mr.

Justice Blatchford, in which is contained a list of the various inspection laws of the different States, we do not observe any laws which seem to provide for the inspection of articles other than those which are the produce of the State, and this generally with a view to preparing them for exportation.

"But, be this as it may, and without attempting to lay down any specific proposition on this somewhat difficult subject, there is enough in the case before us to decide it on satisfactory grounds, without passing upon the general right of the State to inspect imports, or the qualifications to which it must necessarily be subject. The law in question is a discriminating law, and requires the inspection of flour brought from other States, when such inspection is not required of flour manufactured in Virginia."

In support of this conclusion the court referred to *Welton* v. *Missouri*, 91 U. S. 275, 281; *Railroad Company* v. *Husen*, 95 U. S. 465; *Minnesota* v. *Barber*, 136 U. S. 313, 319, and *Brimmer* v. *Rebman*, 138 U. S. 78, from the last two of which we have just quoted, and with the last-named of which it was held that the case was identical in principle.

The result of the adjudications may be stated as follows:

1. Inspection laws which act upon a product of the State, and whose object is to improve the quality, fix the form and size of the packages, and in other ways fit the product of the State for exportation and domestic use, and maintain its credit in the market, were familiar prior to the adoption of the Constitution, are recognized by that instrument, have been in force in many of the States since, and will be sustained as valid and constitutional.

2. There were at the time of the adoption of the Constitution no laws providing for the inspection of articles other than those which were the produce of the State,

and such laws have never in practice been regarded as inspection laws within the sense of that term as used in the Constitution.

3. Any law which, under the pretense of being an inspection law, in fact lays a tax or burden upon importations from another State, is unconstitutional and void.

4. Inspection laws which make discriminations against products and industries of some of the States in favor of the products and industries of their own or other States, are unconstitutional and void.

5. This result is not avoided by the fact that the statute on its face may not discriminate between products of different States, but it is sufficient if that result necessarily or actually follows from the operation of the statute.

The application of these principles to the case now before the court can lead to but one result.

No coal is produced in the State of Louisiana. All that is used in that State comes from Pennsylvania or Alabama, with a very small quantity from Tennessee.

That from Pennsylvania is brought down the navigable streams leading from that State to Louisiana. That from Alabama and Tennessee comes exclusively by rail, p. 14.

The Pennsylvania dealer in coal, therefore, is compelled to compete in the markets of Louisiana with Alabama coal. The latter may be sold freely by any standard of measurement which the vendor and purchaser may agree upon, while Pennsylvania coal must be gauged by State officers, and a fee paid them for the service.

And this distinction is made merely on account of a difference in the package or vehicle of transportation. A clearer case of discrimination under the guise of an inspection law could hardly be imagined.

Again, it has frequently been held that goods imported into a State from a foreign country or another State, are while they remain in the hands of the importer and in the original package, so far under the protection of the interstate commerce clause of the Constitution that no State can interfere by seizure or the exaction of a license tax, or any other action in restraint of their free sale at the place where the importation terminates. *Brown* v. *Maryland*, 12 Wheat. 419; *Almy* v. *California*, 24 How. 169; *Low* v. *Austin*, 13 Wall. 29; *Bowman* v. *Chicago & Northwestern Railway Co.* 125 U. S. 465; *Leisy* v. *Hardin*, 135 U. S. 100; *Lyng* v. *Michigan*, 135 U. S. 161; *Robbins* v. *Shelby County Taxing District*, 120 U. S. 489; *Crutcher* v. *Kentucky*, 141 U. S. 47.

The fee charged in this case amounts to a tax on the sale when made by the importer in the original package, and only in the original package.

When the case was before the Supreme Court of Louisiana there was, p. 54, "a suggestion of counsel of the hardship of having to pay ten dollars for the privilege of selling ten barrels of coal from a boat." This suggestion, however, was held to be "irrelevant and without foundation," for the reason "that the act applies exclusively to sales of boat loads or barge loads of coal, and not to sales of a particular number of barrels of coal from a boat or barge."

This is, indeed, a naive response.

For a sale other than of the whole original package, no tax or fee is charged. The importer is taxed when he sells in the original package, but may sell free from restriction if he breaks the package, thus mingling the commodity with the general mass of property in the State. The true constitutional theory is thus turned upside down, and the State taxes the very thing which the

Constitution prohibits it from taxing, while refraining from laying its hands on a subject of taxation which is perhaps within its legitimate jurisdiction.

Our third and fourth assignments of error are based upon those provisions of the acts of 1811 and 1812, for the admission of Louisiana into the Union, which provide for the perpetual free navigation of the Mississippi River. 2 Stat. 642, 703. These provisions were certainly not adopted without some object; and, if they do not create a more liberal rule for interstate commerce on the Mississippi than that established by the Constitution for such commerce generally, they at all events emphasize it very strongly. Such enactments ought certainly to be potent enough to secure the citizen against "inspection laws," the only perceptible object of which is, as the Supreme Court of New York said in supposing *arguendo* a similar one, "to put fees into the pockets of public officers." *Shoemaker* v. *Lansing*, 17 Wend. 328.

The statute in question constitutes a clear attempt to tax and regulate commerce between the States in coal, and should for that reason be held unconstitutional and void.

We ask that the judgment of the Supreme Court of Louisiana be reversed, and the cause remanded with instructions to affirm the judgment of the city court of New Orleans rejecting the demand of the State.

CHARLES W. HORNOR.
WILLIAM S. BENEDICT.
GEORGE A. KING,
Attorneys for Plaintiff in Error.

Office Supreme Court U. S.
FILED.
MAR 16 1893
JAMES H. [illegible]

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

No. 159.

THE PITTSBURGH AND SOUTHERN COAL COMPANY, PLAINTIFF IN ERROR,

v.

THE STATE OF LOUISIANA FOR THE USE OF THE CHARITY HOSPITAL OF NEW ORLEANS.

BRIEF FOR DEFENDANT IN ERROR.

GEORGE GRAY,
For Defendant in Error.

JUDD & DETWEILER, PRS., WASHINGTON, D. C.

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vs.

THE STATE OF LOUISIANA FOR THE USE OF THE CHARITY HOSPITAL OF NEW ORLEANS.

BRIEF FOR DEFENDANT IN ERROR.

I.

A statute of the State of Louisiana, enacted in 1888 and entitled "An act for the appointment of two coal and coke boat gaugers, to fix their compensation, and to define their duties," provides as follows:

"SECTION 1. *Be it enacted, &c.*, That there shall be appointed by the governor, by and with the advice and consent of the senate, two coal and coke boat gaugers, who shall have their offices in the city of New Orleans: *Provided, however*, That the governor shall have the power to remove from office any coal and coke boat gauger upon satisfactory proof made to him of negligence and official misconduct.

"SEC. 2. Each of said gaugers shall give bond, payable to the governor or his successor in office, with two sufficient

sureties, in the penal sum of five thousand dollars, conditioned for the faithful performance of the duties required by law.

"SEC. 3. It shall be the duty of said gaugers, when called upon for that purpose, to gauge any coal or coke boat or barge in the port of New Orleans or the State of Louisiana.

"SEC. 4. Such gauging shall consist in reducing the length, breadth and depth, inside measurement, of boats or barges, deducting all obstructions and displacements, into cubic inches and dividing said cubic inches by twenty-six hundred and eighty-eight (2,688), thus ascertaining the net measurement in bushels. Two and six-tenths ($2\frac{6}{10}$) bushels shall constitute a barrel.

"SEC. 5. In all cases it shall be the duty of the gaugers, or either of them, to respond promptly to any call made for their or either of their services, and to furnish a full and detailed certificate of gross measurement of the boat or barge gauged, and the allowance made for obstructions and displacements.

"SEC. 6. The fee for gauging or regauging shall be ten dollars ($10) for each boat, and five dollars for each barge, to be paid by the seller, except as hereinafter provided.

"SEC. 7. The purchaser of any boat or barge of coal or coke shall have the privilege of calling upon the said gauger or gaugers to regauge boats or barges in all cases where the original gauge is not satisfactory, and such regauge shall be adopted as the correct measure. If the original gauge shall be found to be correct, then the purchaser shall pay the fee for regauging; but if the regauge shall show a less measure, then the seller shall pay the fee.

"SEC. 8. No boat-load of coal or coke shall be sold in this city or State until it has been inspected as provided for in this act, and any person who shall sell a boat-load of coal or coke that has not been gauged as aforesaid shall be liable to a penalty of fifty dollars (50) for each boat or barge as sold, to be recovered, with costs of suit in any court of competent jurisdiction, for the benefit of the charity hospital of New Orleans.

"SEC. 9. The term of office of said gaugers shall be four years. This act to take effect from and after the passage."

Suit was brought by the defendant in error against the plaintiff in error in the city court of New Orleans, to recover the penalty of fifty dollars for selling in New Orleans, one boat of coal in violation of section 8 of this act.

The record shows that the plaintiff in error is a Pennsylvania corporation, and that the boat-load of coal sold by it in New Orleans was mined in Pennsylvania, and floated down the Ohio and Mississippi rivers to that city; that no coal is produced in Louisiana, and that besides the water-borne coal, coal is brought into the State by railroad from Tennessee and Alabama.

The case came for review before the supreme court of the State of Louisiana, which, after deciding, that under the statute in question the employment of the State gaugers for the purpose of measuring every boat or barge of coal or coke sold in the State was compulsory, and that the statute is not hostile to any provisions of the State constitution, overrules the contentions that it is violation of paragraph 3 of section 8, article 1, of the Federal Constitution, which vests in Congress the power "to regulate commerce with foreign nations and among the several States and with the Indian tribes;" or of paragraph 2, section 10, article 1, which forbids any State "without the consent of Congress to lay any imposts or duties on imports or exports except what may be absolutely necessary for executing its inspection laws." (See Record, pp. 47–53.)

With the correctness of the judgment of the State court in overruling these two contentions, we are here alone concerned. It is true that the third and fourth assignments of error allege respectively, that the statute of Louisiana is in conflict with the act of Congress approved February 11, 1811, entitled "An act to enable the people of the Territory of Orleans to form a constitution and State government, and for the admission of said State into the Union on an equal footing with the original States," and with the act of Congress approved April 8, 1812, entitled "An act for the

admission of the State of Louisiana into the Union, and to extend the laws of the United States to the said State;" but it is not perceived that these acts of Congress imposed, or were competent to impose, on the State of Louisiana any other or greater restrictions than are imposed by the Constitution of the United States in the paragraphs already referred to, and the alleged violation of which, constitutes the ground of the first and second assignments of error. (See brief of plaintiff in error, pp. 10, 11.)

As the 3d and 4th assignments of error will not further claim our attention, we are confined to a consideration of the questions raised by the 1st and 2d, which are the only other assignments of error.

The 2d assignment is as follows:

"That said court erred in sustaining said statute of Louisiana because the same is in conflict with article 1, sec. 10, par. 2, of the Constitution of the United States, which provides:

"No State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing it's inspection laws: and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress."

It has been decided by this Court in *Woodruff* vs. *Parham*, 8 Wall., 123, that the word "imports" in this provision of the Constitution, refers only to articles imported from foreign countries into the United States, and not to articles imported from one State into another.

In view of this decision, it is not worth while to dwell at length on the provision of the Constitution just quoted, although much of the brief of plaintiff in error is devoted to its discussion.

The inhibition on the States, is as to laying a duty or impost on imports from foreign countries and not from one

State to another. The restriction is on the *taxing* power of the States, not on any other power. (*Gibbons* vs. *Ogden*, 9 Wh., 203.) The exception from that restriction, is of the power of the State *to lay such a tax* on imports and exports as may be absolutely necessary to execute it's inspection laws. It is not, however, without significance that inspection laws are, in the words of Chief Justice Marshall, "certainly recognized in the Constitution as being passed in the exercise of a power remaining with the States." * * * "They form a portion of that immense mass of legislation which embraces everything within the territory of a State not surrendered to a General Government, all which can be most advantageously exercised by the States themselves." (*Gibbons* vs. *Ogden*, 9 Wh., 203.) Recognized by express words in the Constitution, they have been recognized in decisions of this Court, as belonging to that important class of legislative and administrative functions collectively known as the "police powers," which, when acting within their proper limits, belong exclusively to the States.

These powers are admittedly of vital importance to the autonomy of the States, and this Court will decline to interfere with them except when necessary to preserve the integrity of a power surrendered to the General Government.

We need not, then, embarrass this argument with any further consideration of the inhibition contained in article 1, sec. 10, par. 2, of the Constitution. The justification of the Louisiana statute is not rested on its being within the exception of that provision; nor is it necessary to controvert the argument of counsel for plaintiff in error by which they attempt to show that "inspection laws" do not properly apply to articles not the product of the State enacting them, or to contend that a precise and exhaustive definition of them was *not* intended to be given by Chief Justice Marshall in *Gibbons* vs. *Ogden*, and that Turner *vs.* Maryland does not exclude the Louisiana statute from the category of inspection laws.

If it *were* necessary, we could refer to the provision of the Constitution just quoted, which speaks of *imports* (from foreign countries) as well as exports, as being subject to the State inspection laws, to the common and obvious signification of the words, to accepted usage, and to the fact that this Court has never in any decision so limited the scope and definition of these laws.

What we contend for is, that the statute in question, although having nothing to do with imports or exports, foreign or interstate, is such an inspection law as is recognized in this provision of the Constitution as being within the power of a State to enact; but whether technically an inspection law or not, that it is such an exercise of the police power or of the general legislative power of the State, as neither comes within any express inhibition of the Constitution nor trenches on any power surrendered by the States to the General Government.

And this brings us to the consideration of the first assignment of error, which is the only one that concerns this case, viz., that the statute of Louisiana in question violates article 1, section 8, par. 3, of the Constitution of the United States, which provides that the Congress shall have power "to regulate commerce with foreign nations, among the several States, and with the Indian tribes."

II.

Is the Louisiana statute a regulation of interstate commerce in such a sense, either as to invade the exclusive domain of Congress in that regard, or as to occupy ground already lawfully occupied by Congress under the Constitution?

We may dismiss the second branch of the inquiry, because it is not suggested that Congress has assumed to legislate in regard to the matter covered by this statute.

As to the first, then:

The difficulty and impolicy of determining by precise rule and definition what is a regulation of interstate commerce, so as to be forbidden to the States, have often been recognized by this Court.

Railway Co. vs. *State of Maryland*, 21 Wall., 472.
Railway Co. vs. *Husen*, 95 U. S., 470.

Precise and technical definition tends often to promote fraud and evasion.

The *ratio decidendi* is of necessity largely peculiar to the individual case.

Certain propositions, however, may be considered as established, which aid us in arriving at a just solution of these questions as they arise.

The proposition which in the early history of this Court seemed likely to be accepted, viz., that the power granted to Congress to regulate interstate commerce was exclusive only after it had been exercised, has gradually given away to the doctrine, as last authoritatively announced in Leesy *vs.* Hardin, that whenever the subject is national in its character and admits and requires uniformity of regulation, the power of Congress is exclusive.

If the Louisiana statute were in any proper sense a regulation of commerce, we might well contend that it was local in its nature, and not national, and dealt with a subject not requiring uniformity of regulation, and that, therefore, the State could act until Congress interferes and supersedes its authority.

Can it be, that, in the absence of congressional action, a denial to the State of the power to establish reasonable and just standards of measurement, and an inspection to enforce them, is essential to that freedom of commerce, that is ordained by the silence and inaction of Congress? Is the subject-matter in this case, such as requires a uniform system as between the States?

If there be power in Congress, to deal with the subject, it has not done so; and it is clearly, not one in respect to which, "one system or plan of regulation for the whole country is required," but is local in it's nature. The provisions of the statute, are, to use the language of the Court in *Leisy* vs. *Hardin*, p. 118, "so far as relating to commerce, mere aids rather than regulations."

The necessity for such legislation, is peculiar to the sale of coal by the boat-load, to the sugar-planters and others in Louisiana, and to the great water highways that are a feature of that State and some others on the Mississippi and it's affluents. Local regulation better answers the end in view, and is efficient and competent, at least till superseded by Congress. As was said by this Court, in *Munn* vs. *Illinois*, 94 U. S., 135, in speaking of warehouses as instruments of State as well as of interstate commerce,

"Their regulation is a thing of domestic concern, and certainly until Congress acts, in reference to their interstate relations, the State may exercise all the powers of government over them, even, though, in so doing, it may indirectly operate on commerce outside it's immediate jurisdiction."

If the powers of the State are weakened or destroyed, many of the ends for which government is instituted must remain unaccomplished. In our dual system, the two governments, National and State, must possess in useful and available potentiality, the sum of all the legislative powers, that can be rightfully exercised under free institutions.

But, we contend that this statute is not properly a regulation of interstate commerce at all.

Clearly this statute does not on its face *expressly* regulate, or *directly* impose, any tax or burden upon interstate commerce. It thus differs entirely from the State laws which were the subject of review in such cases as *Brown* vs. *State of Maryland*, 12 Wh., 419; *Almy* vs. *State of California*, 24 How. 169; *Welton* vs. *State of Missouri*, 91 U. S., 275; *Railway Co* vs. *Husen*, 95 U. S., 465; *Voight* vs. *Wright*, 141 U. S., 62.

It is equally clear that it is an *honest* exercise on the part of the State of Louisiana of a police power, and that it was not intended, under the guise and cover of an inspection law, to regulate or obstruct interstate commerce, or to achieve by indirection what could not be directly accomplished. (*Mugler* vs. *Kansas*, 123 U. S., 661, 662.)

We admit, however, that a State law, obnoxious to no just criticism on either of the foregoing grounds, "may, by its necessary operation, be destructive of rights granted or secured under the Constitution," and so be unconstitutional and void. (*Minnesota* vs. *Barber*.)

Does the Louisiana statute, admittedly honest and unequivocal in its purpose, and interfering by no express provision with interstate commerce, as such, by its necessary operation invade the domain of power granted to Congress, or practically and in effect usurp, in any proper sense, the power to regulate interstate commerce?

In the delicate matter of applying its judgment to the determination of this juridical fact, this Court has allowed itself to deal practically with each case as it arose, on the circumstances that attended it. By so doing, it has been enabled to maintain the integrity of the commerce-regulating power of the Constitution, without depriving the powers reserved to the States of their appropriate vigor, thus justifying confidence in the perpetuity of our dual scheme of government.

In this practical dealing with the subject, this Court has in repeated instances laid much stress upon the cautionary proposition that—

"It is not everything that *affects* commerce that amounts to a regulation of it within the meaning of the Constitution."

State Tax on Railway Gross Receipts, 15 Wall., 293.
Sherlock vs. *Alling*, 93 U. S., 99.
Railroad Co. vs. *Husen*, 95 U. S., 471.
Gibbons vs. *Ogden*, 9 Wh., 203.
Munn vs. *Illinois*, 94 U. S., 135.

In *Sherlock* vs. *Alling* the Court says:

"In conferring upon Congress the regulation of commerce, it was never intended to cut the States off from legislating on all subjects relating to the health, life, and safety of their citizens, though the legislation might indirectly affect the commerce of the country. Legislation in a great variety of ways may affect commerce and persons engaged in it, without constituting a regulation of it within the meaning of the Constitution. * * * And it may be said generally that the legislation of a State not directed against commerce or any of its regulations, but relating to the rights, duties, and liabilities of citizens, and only indirectly and remotely affecting the operations of commerce, is of obligatory force upon citizens within its territorial jurisdiction, whether on land or water or engaged in commerce, foreign or interstate, or any other pursuit."

In *Smith* vs. *Alabama*, 124 U. S., 473, 482, the Court, in deciding that a law of Alabama requiring locomotive engineers to be examined and licensed before exercising their calling, even so far as it affected engineers engaged in interstate commerce, was constitutional, said:

"There are many cases, however, where the acknowledged powers of a State may be exerted and applied in such a manner as to affect foreign or interstate commerce without being intended to operate as commercial regulations."

And finally, in the same case, the Court says of the law before it:

"So far as it affects transactions of commerce among the States it does so only indirectly, incidentally, and remotely, and not so as to hinder or impede them, and, in the particulars in which it touches those transactions at all, it is not in conflict with any express enactment of Congress on the subject nor contrary to any intention to be presumed from its silence."

To the same effect is the subsequent case of *Nashville, etc., Railroad* vs. *Alabama*, 128 U. S., 101, in which Mr. Justice Field says:

"Such legislation is not directed against commerce, and only affects it incidentally, and therefore cannot be called, within the meaning of the Constitution, a regulation of commerce."

In *Munn* vs. *Illinois*, 94 U. S., 135, Chief Justice Waite, in delivering the opinion of the Court, adopted the language of Mr. Justice Strong in *State Tax on Railway, &c.*, 15 Wall., 293, that "it is not everything that *affects* commerce that amounts to a regulation of it within the meaning of the Constitution," and then said:

"They (these warehouses) are used as instruments by those engaged in State as well as those engaged in interstate commerce, but they are no more necessarily a part of commerce itself than the dray or the cart by which, but for them, grain would be transferred from one railroad station to another. Incidentally they may become connected with interstate commerce, but not necessarily so. Their regulation is a thing of domestic concern, and certainly, until Congress acts with reference to their interstate relations, the State may exercise all the powers of government over them, even though in so doing it may indirectly operate upon commerce outside its immediate jurisdiction."

Among the measures which may *affect* or influence commerce, but are not regulations of it within the meaning of the Constitution, are reasonable inspection laws. (*Gibbons* vs. *Ogden.*)

It is not necessary, in this connection, to confine the scope of these laws to the phase dwelt upon by Chief Justice Marshall in that case. Their energy and usefulness as legitimate police regulations, extend to the ascertainment of quantity as well as quality.

To prescribe an honest standard of weight or measure, by which staple articles of consumption shall be bought and sold, and the enforcement of conformity to the standard prescribed by reasonable sanctions, is one of the highest concerns of good government everywhere. Such laws relate

to the conduct of every-day life and affect the morals and security of the people in their daily business. If they do not expressly, or by their necessary operation, amount to a regulation of interstate or foreign commerce as such, the Court has every motive to recognize their competence, that it can have to maintain the integrity of the power of Congress within its appropriate sphere.

The statute in question manifestly is for a commendable purpose, manifestly is in the interests of good morals and good government. It prescribes, that in all cases where coal or coke is sold in the State by boat load, the measurement of the cubic contents shall be honestly made, by deducting from the result as ascertained by the exterior measurements, the cubic space of all "obstructions and displacements." The admitted fact that no coal is produced in Louisiana, and that all coal is necessarily brought from outside the State, does not affect the question. This is probably the situation in the great majority of the States. The statute is not directed at the transportation or movement of the coal, or at coal as coming from other States, nor does it, by its necessary operation, impose any burden or restraint on interstate commerce in that article as such. It merely says to the seller of coal in Louisiana, "You must truly state the quantity you sell," by prescribing an obviously just standard of measurement, and to enforce that lawful command, it provides for a sworn State officer as gauger, who shall when called upon make measurement according to law. The fee exacted for the service is reasonable, being not greater, and in some cases even less, than that charged by private gaugers. (See Record, p. 18.)

The reasoning which would strike with nullity a law like this would abrogate all laws of the several States establishing the cubic contents of a bushel or the weight of given quantities of different grains or the pounds in a ton whenever they were applicable to commodities brought into the States. The load of hay hauled across the State line for sale

in a border town, could not be required to be weighed on the village scales. The clerks of the market in New York and Philadelphia could not enforce honest weight in the prints of butter brought across the river from New Jersey. These are some of the things to which the inspection laws and general police powers of the States rightfully apply. In the language of the court in *Gibbons* vs. *Ogden*, "No direct general power over these objects is granted to Congress, and consequently they remain subject to State legislation."

Laws of this character, which do not regulate commerce as such, nor by their necessary operation burden or restrict it, though they may indirectly *affect* it, are not regulations of it under the Constitution.

Besides this negative proposition, as to what will *not* determine the character of a State law not dealing directly with interstate commerce as such, the affirmative test as to discrimination is most frequently invoked by this Court to determine the question whether such a law is substantially and practically a regulation of commerce or not.

It may be safely affirmed that a law otherwise within the competence of a State to enact, which, not dealing expressly with interstate commerce, works no actual discrimination as to persons or commodities of different States, is not a regulation of interstate commerce within the meaning of the Constitution.

The counsel on the other side contends that, though the statute in question does not on its face discriminate between the products of different States, that result actually and necessarily follows from the operation of the statute.

Upon establishing the truth of this contention, it seems to us, the case of plaintiff in error depends, and we confidently accept the test. Let us see.

No coal at all is produced in Louisiana, and it is in evidence of record that coal is brought into the State from Tennessee and Alabama, as well as from Pennsylvania. There

can therefore be no *actual* or *resulting*, as there is no direct, discrimination in favor of domestic coal.

But, say counsel, there is discrimination in favor of Alabama coal, and against Pennsylvania coal, because, the former being brought by rail to Louisiana and the latter by water, the standard of measurement and the State gaugers prescribed by the Louisiana statute, apply to the latter and not to the former. If the statute had in effect actually discriminated between the sale of Alabama coal and Pennsylvania coal, it would have been obnoxious to the rule, that such discrimination constitutes a regulation of interstate commerce and is therefore, under the Constitution, void.

To prevent a State from making such discrimination between the products of different States, as they may become the subjects of commerce, was the principal motive for making and adopting the Constitution.

But such discrimination must be a real and not a merely seeming one. The fact that all, or the principal part of the coal from Pennsylvania, is water-borne, and that coal from other States is brought by land carriage, whether by the necessity of the case or by the choice of the shipper, should not, and cannot, exempt the water-borne coal from conditions that are inherent in and peculiar to that mode of carriage. To deal with matters resulting from these peculiar conditions by police laws, honestly purposed and reasonable in themselves as naturally relating to these conditions, is not the discrimination this Court denounces.

The discrimination here suggested, is inherent in the subject-matter or conditions attending it, and not in the law; and this subject-matter or condition is not artificial and the creation of the law itself, as was the case in *Brennen* vs. *Rebman*, 138 U. S., 78, but exists naturally and is one of the universal facts of commerce.

Coal transported in cars is attended by conditions peculiar to itself. Regulations made for these conditions, cannot be applicable to those peculiar to coal that is water-borne.

Coal in cars can be more conveniently *weighed;* the quantity of coal in boats must almost necessarily be ascertained by *measurement.* It would be as just to say that regulations as to the cording of wood, was a discrimination in favor of the fuel sold by the barrel or the ton.

Water-borne coal is subject by its environment and the conditions peculiar to it to harbor regulations and wharf dues prescribed by State law, from which car-carried coal is by the conditions peculiar to it exempt. (See Brig *Jas. Gray vs.* Ship *John Fraser*, 21 How., 184.) But that fact does not constitute a discrimination in the laws, in favor of the latter and against the former.

The courts deal with real discriminations, and not with fanciful and merely argumentative discriminations. It is not worth while to dwell longer upon this obvious distinction between discrimination by law and discrimination by conditions not created by law.

The Louisiana statute makes no discrimination between coal from Pennsylvania and that from other States, and therefore places no burden or restriction on interstate commerce.

The cases illustrating the practical dealing of this Court with this question are numerous. None of them warrant the denunciation of such a statute as this. We cite a few of them.

In *Woodruff* vs. *Parham*, 8 Wall., 140, a statute of Alabama prescribed a tax on *all auction sales.* It was contended that it was an attempt to tax an article brought into the State from another State for the purpose of sale. The court, after deciding that article 1, sect. 10, par. 2, forbidding a State to lay any imposts or duties on imports or exports, &c., did not apply to imports from one State into another, but only to imports from foreign countries, also takes the case out of the scope of the commerce clause of the Constitution by saying:

"There is no attempt to discriminate injuriously against the products of other States or the rights of their citizens,

and the case is not, therefore, an attempt to fetter commerce among the States."

In *Hinson* vs. *Lott*, 8 Wall., 148, the case was presented of a statute of Alabama, requiring all dealers in liquors introducing any such liquors into the State for sale, first to pay a tax of fifty cents per gallon on each gallon thereof. In a previous section it required every distiller to take out a license, for which he should pay fifty cents per gallon on all whiskey and brandy from fruits *manufactured in the State*. In delivering the opinion of the court Mr. Justice Miller, after saying "Nor can it be doubted that a tax which so seriously affects the interchange of commodities between the States as to essentially impede or seriously interfere with it is a regulation of commerce," concludes as follows:

"The tax in the case before us, if it was of the character we have suggested, discriminating adversely to the products of all the other States in favor of those of Alabama and involving a principle which might lead to actual commercial non-intercourse, would, in our opinion, belong to that class of legislation and be forbidden by the clause of the Constitution just mentioned; but a careful examination of the statute shows that it is not obnoxious to this objection. * * * We do not see in it an attempt to regulate commerce, but an appropriate and legitimate exercise of the taxing power of the States."

The case of *Brown and another* vs. *Houston*, 114 U. S., 622, is singularly like the case at bar in its essential facts, and it is submitted that the principles upon which it was decided are applicable to the present case.

The law of the State of Louisiana taxing personal property in that State, was sought to be enforced against certain boat-loads of coal lying in the Mississippi river. Mr. Justice Bradley, stating the facts, thus quotes from the record:

"That when the assessment of the tax complained of was made the firm had paid the State taxes due upon their capital stock and had paid State and city licenses to do busi-

ness for that year; that at the time of the assessment of the tax in question the coal upon which it was levied was in the hands of Brown & Jones, as agents for the plaintiffs, for sale, having just arrived from Pittsburgh, Pennsylvania, by flat-boats, and was on said boats in which it arrived and afloat in the Mississippi river; that it was held by Brown & Jones to be sold for account of the plaintiffs by the boat-load, and that since then more than half of it had been exported from this country on foreign steamships and the balance sold into the interior of the State by the flat-boat-load. Samuel S. Brown, one of the plaintiffs, testified * * * that it was shipped from Pittsburgh, Pennsylvania, in 1880, and was received in New Orleans in its original condition and in its original packages, and still owned by the plaintiffs. No other proof was offered in the case."

It was contended by the plaintiff in error that the tax in question violated the same provisions of the Constitution whose violation is charged in the case at bar, viz, article 1, section 8, clause 3, and article 1, section 10, clause 2.

In alluding to the contention that the tax violated the provision last cited, Judge Bradley cited Woodruff *vs.* Parham, so often referred to, on the point, that the term "imports," as used in that clause of the Constitution, does not refer to articles carried from one State into another, but only to articles imported from foreign countries into the United States, and then proceeds to make the following observation on that case:

"Woodruff and others were auctioneers and were taxed under this ordinance for sales at auction made by them, including sales of goods the product of other States than Alabama, received by them as consignees and agents and sold in the original and unbroken packages; but as the ordinance made no discrimination between sales at auction of goods produced in Alabama and goods produced in other States, the court held that the tax was not unconstitutional. A contrary result must have been reached under the ruling in *Brown* vs. *Maryland*, if the constitutional prohibition referred to had been held to include imports from other States as well as imports from foreign countries, for, at the time the

tax was laid, the condition of the goods, in reference to their introduction into the State, was precisely the same in one case as in the other."

As to the commerce clause, the court, through the learned justice, after citing and discussing a number of cases in which State laws had been held to be regulations of commerce, &c., and so violative of the constitutional provision in question, says:

"In short, it may be laid down as the settled doctrine of this Court, at this day, that a State can no more regulate or impede commerce among the several States than it can regulate or impede commerce with foreign nations. This being the recognized law, the question then arises whether the assessment of the tax in question amounted to any interference with, or restriction upon the free introduction of the plaintiff's coal from the State of Pennsylvania into the State of Louisiana, and the free disposal of the same in commerce in the latter State; in other words, whether the tax amounted to a regulation of, or restriction upon, commerce among the States; or only to an exercise of local administration under the general taxing power, which, though it may incidentally affect the subjects of commerce, is entirely within the power of the State until Congress shall see fit to interfere and make express regulations on the subject.

"As to the character and mode of assessment, little need be added to what has already been said. It was not a tax imposed upon the coal as a foreign product, or as the product of another State than Louisiana, nor a tax imposed by reason of the coal being imported or brought into Louisiana, nor a tax imposed whilst it was in a state of transit through that State to some other place of destination. It was imposed after the coal had arrived at its destination and was put up for sale. * * * The taxing of goods coming from other States, as such, or by reason of this so coming, would be a discriminating tax against them as imports, and would be a regulation of interstate commerce, inconsistent with that perfect freedom of trade which Congress has seen fit should remain undisturbed."

We think we have already commented sufficiently on the statute in question here, to show that it imposes no discriminating condition or regulation on coal, as coming from Pennsylvania, and that the fact, that coal coming from that State to Louisiana is largely or altogether water-borne, cannot render an inspection law such as this, relating to the measurement of water-borne coal, a discriminating statute within the meaning of the decisions in that regard. It was enacted *diverso intuitu*.

The case of *Brown* vs. *Houston* just cited, would seem to dispose of another point, somewhat dwelt upon by counsel for plaintiff in error, viz., that because the coal in question was in the boats in which it had been transported from another State, therefore, and on that account alone, it was exempt from the operation of the inspection laws or police laws of the State of Louisiana.

If a boat-load of coal can be called "an original package" in any proper sense, the case referred to, decided that just such boat-loads of coal as we are concerned with in the case at bar, circumstanced in precisely the same manner, brought down the same water-ways from another and the same State, to the same port of New Orleans, still owned by the original shippers, and "in its original condition and in its original packages" (see *Brown* vs. *Houston*, p. 626), was not exempt by reason thereof and on that account alone from the general tax laws of the State.

A fortiori, it would seem, that these same boat-loads of coal were not, therefore, and on that account alone, exempt from the operation of such reasonable inspection or police laws as we are here considering.

It was of precisely these same boat-loads of coal that Mr. Justice Bradley was speaking in Brown *vs.* Houston (*supra*), page 632, when he said:

"The coal had come to its place of rest for final disposal or use and was a commodity in the market of New Orleans. * * * It had become part of the general mass of prop-

erty in the State. * * * It was subjected to no discrimination in favor of goods which were the product of Louisiana or goods which were the property of citizens of Louisiana."

We submit with confidence that if, as we think we have shown, there was no such discrimination in this case, the coal in question was properly subject to the reasonable inspection provided for by the Louisiana statute.

That statute does not interfere with "the free disposal of the coal in commerce" nor by discrimination segregate it from the mass of property in the State, and ear-mark it, so to speak, as an article of interstate commerce, so as to amount to a regulation of commerce within the meaning of the Constitution.

Honest legislative effort, to secure a just and true standard of measurement for the dealings between man and man in Louisiana, will not be balked by this Court on such a suggestion as is here made by counsel for plaintiff in error.

Coal from other States can still be freely sold in boatloads in Louisiana, and it will not be considered that its sale is restricted, by the requirements of this statute, in any sense that conflicts with the commerce clause of the Constitution. A State law *prohibiting* the sale of all liquors, was considered to so conflict, because it practically denied entry into the State of a subject of interstate commerce, otherwise legitimate, by not allowing the importer to part with it by sale; but the sale, necessary to vindicate the right to import, was confined to a sale in the original package of importation.

When sale in the original package, free from State control, is necessary to vindicate the freedom of interstate commerce from prohibitive or restrictive State legislation, such sale becomes an important privilege. Such a case was presented in *Leisy* vs. *Hardin*, 135 U. S., 100, where the State law absolutely prohibited the sale of an article, which

was otherwise a legitimate subject of interstate commerce. *Brown* vs. *Maryland*, 12 Wheaton, and *Low* vs. *Austin*, 13 Wall., 29, were cases of imports from *foreign* countries and present a different question from the one we are now considering. Mr. Justice Bradley distinguishes them in *Brown* vs. *Houston* (*supra*) at page 628.

Bowman vs. *Chicago, &c., Railway Co.*, 125 U. S., 465, was a case, where the law of Iowa undertook to forbid common carriers to bring intoxicating liquors into the State, from any other State or Territory, without being first furnished with a certificate, under seal from a designated officer, certifying that the consignee is authorized to sell intoxicating liquors in the county.

The Court properly held the statute, so far, a regulation of interstate commerce, and therefore void, because it assumed to declare, that an article, which by common usage was a legitimate subject of commerce, was not so, and to prohibit its introduction into the State, the Court concluding its opinion thus:

"It is enough to say that the power to regulate or forbid the sale of a commodity after it has been brought into the State, does not carry with it the right and power to prevent its introduction by transportation from another State."

In another connection, it is interesting to note that the Court says:

"It is impossible to justify this statute of Iowa by classifying it as an inspection law. The right of the States to pass inspection laws is expressly recognized in art. 1, § 10, of the Constitution. * * * They are confined to such particulars as in the estimation of the legislature and according to the customs of trade are deemed necessary to fix the inspected article for the market by giving to the purchaser public assurance that the article is in that condition and of that quality which makes it merchantable and fit for use or consumption." * * * "As was said in *Turner* vs. *Maryland*, 107 U. S., 38, 55: 'Recognized elements of inspection laws,

have always been—quality of the article, form, capacity, dimensions, and weight of package, mode of putting up, and marking and branding of various kinds—all these matters being supervised by a public officer having authority to pass or not to pass the article as lawful merchandise, as it did or did not answer the prescribed requirements. It has never been regarded as necessary, and it is manifestly not necessary, that all these elements should coexist in order to make a valid inspection law. Quality alone may be the subject of inspection, without other requirement, or the inspection may be made to extend to all of the above matters. It has never been regarded as within the legitimate scope of inspection laws to forbid trade in respect to any known article of commerce, irrespective of its condition and quality, merely on account of its intrinsic nature and the injurious consequences of its use and abuse.'"

It is not seen, that the other cases cited by plaintiff in error on page 12 of his brief, relate to any point involved in the decision of the case at bar.

It only remains to advert to the three late decisions of this Court, largely quoted from, and apparently much relied upon, by counsel for plaintiff in error, viz., *Minnesota* vs. *Barber*, 136 U. S., 313; *Brimmer* vs. *Rebman*, 138 U. S., 78, and *Voight* vs. *Wright*, 141 U. S., 62.

The facts in each case are well known to the Court, and need not be recited at length.

In *Minnesota* vs. *Barber* the statute of the State, by its necessary operation, prohibited sound meats from being brought from other States into Minnesota, thus discriminating in favor of meats butchered in that State, and against those, the product of animals slaughtered in other States.

The discrimination worked by the statute was clear, palpable, and unavoidable. The Court, after commending reasonable inspection laws, says:

"But a law providing for the inspection of animals, whose meats are designed for human food, cannot be regarded as a rightful exertion of the police powers of the State, if the in-

spection prescribed is of such a character, or is burdened with such conditions, as will prevent altogether the introduction into the State of sound meats, the product of animals slaughtered in other States."

Besides, it is impossible to carefully consider the provisions of the law, without coming to the conclusion that this discrimination was covertly intended.

Brimmer vs. *Rebman*, presented a case of clearly attempted *evasion* of the commerce clause of the Constitution, by a discrimination against the products of distant States, under the guise of prescribing a statutory distance within which alone uninspected meats could be sold. The Court here again shows how practically it deals with the circumstances, and administers the law of each case, in saying of the State legislature:

"But it may not, under the guise of exerting its police powers, or of enacting inspection laws, make discriminations against the products and industries of some of the States in favor of the products and industries of its own or of other States."

It is submitted, that a consideration of the two cases just referred to, on their facts and the mode in which the court dealt with them, will make more clear the distinction, that leaves the Louisiana statute within the competence of the legislative power of the State. As has been said, the statute is honest in intent, and covers no attempted evasion of constitutional restriction.

All water-borne coal, from *whatever* State, is subject to the same inspection, whose reasonableness and necessity amply appears from the record. There is no discrimination of any kind, in favor of the State's products or the State's citizens. A boat loaded with coal at a New Orleans storage yard, the property of a citizen of Louisiana, to be floated through one of the bayous of the State to an interior plantation or town, must conform to the honest standard of measurement,

and to the inspection necessary to inforce it, prescribed by this statute.

Water-borne coal classifies itself, on lines of inherent differentiation, as a unit of commercial cognizance and classification. Before this law was enacted, it was necessary to measure and inspect it by private gaugers, commercial usage required it, and the statute only established a more honest standard for such necessary measurement, and an even smaller fee to the official, than was paid to the private, gauger.

The reasoning that would condemn the statutes in the two cases just cited, would support the validity of the statute in question now.

The case of *Voight* vs. *Wright*, 141 U. S., 62, is a case in which the Virginia statute in express terms provided, that all flour *brought into* the State and offered for sale, should be reviewed and have the Virginia inspection mark thereon, and there was no law requiring flour manufactured in Virginia to be thus inspected.

The law was condemned by the courts on the ground that it was an expressly discriminating one.

It is submitted in conclusion—

(1.) That the statute of Louisiana is a reasonable inspection law, within the competence of the police power of the State.

(2.) That its classification of water-borne coal as a subject of inspection, is a natural and not artificial classification, inherent and not created by law with a purpose of covert discrimination.

(3.) That it affects interstate commerce only indirectly and remotely, and works by its operation no discrimination that would make it in effect, a regulation of interstate commerce.

(4.) That this Court, in exercising a practical judgment on the facts presented by this record, will not for fanciful or merely technical and argumentative considerations, presenting no case of real, direct or substantial invasion of congressional jurisdiction over interstate commerce, condemn the manifestly honest and reasonable exercise of its police power by the State of Louisiana as set forth in the record of this case.

GEORGE GRAY,
For Defendant in Error.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

No. 10.

THE PITTSBURGH AND SOUTHERN COAL COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF LOUISIANA FOR THE USE OF THE CHARITY HOSPITAL OF NEW ORLEANS.

Supplemental Brief for the Defendant in Error.

In addition to what has been said in regard to the facts of the case, it is well to call attention to the testimony of O. A. Schneidau, agent of the Pittsburgh and Southern Coal Company, referred to and adopted by counsel for plaintiff in error on page 5 of their brief, and found in the Record, pages 7 to 14. From this testimony on behalf of the plaintiff in error it appears that the miners and original owners of this coal floated it down the Mississippi at their own risk and sold it to the Pittsburgh and Southern Coal Company, plaintiff in error, after its arrival at its destination in Louisiana. The original shippers and transporters of the

coal had therefore ceased to own the coal after it was brought within the State.

The sale without inspection, as required by the Louisiana law, was made by the consignee, the plaintiff in error, to Messrs. Coyle & Co., and the facts thus disclosed in the record emphasize the situation, otherwise sufficiently clear, that this coal was not in interstate transit or otherwise beyond the jurisdiction of the State law in question. Plaintiff in error received it and sold it merely as a wholesale coal dealer, under its regular State license to carry on that business.

GEORGE GRAY,
Counsel for Defendant in Error.